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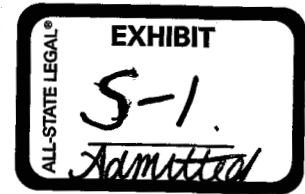
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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF THE GENERIC
PROCEEDINGS CONCERNING ELECTRIC
RESTRUCTURING ISSUES

Docket No. E-00000A-02-0051

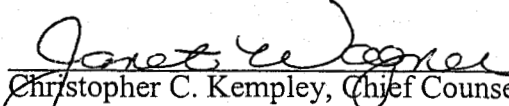
IN THE MATTER OF THE GENERIC
PROCEEDING CONCERNING THE ARIZONA
INDEPENDENT SCHEDULING
ADMINISTRATOR

Docket No. E-00000A-01-0630

NOTICE OF FILING
DIRECT TESTIMONY

Staff hereby provides notice of filing of the Direct Testimony of Barbara Keene in this docket.

RESPECTFULLY SUBMITTED this 30th day of September, 2005.


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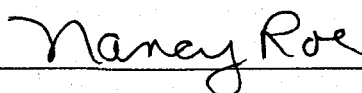
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BEFORE THE ARIZONA CORPORATION COMMISSION

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Commissioner
KRISTIN K. MAYES
Commissioner

IN THE MATTER OF THE GENERIC)	DOCKET NO. E-00000A-02-0051
PROCEEDING CONCERNING ELECTRIC)	
RESTRUCTURING ISSUES.)	
IN THE MATTER OF THE GENERIC)	DOCKET NO. E-00000A-01-0630
PROCEEDING CONCERNING THE ARIZONA)	
INDEPENDENT SCHEDULING)	
ADMINISTRATOR.)	

DIRECT

TESTIMONY

OF

BARBARA KEENE

PUBLIC UTILITIES ANALYST MANAGER

UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION

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ARIZ. CORPORATION COMMISSION

SEPTEMBER 30, 2005

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APPENDICES

1. Resume of Barbara Keene

EXECUTIVE SUMMARY
GENERIC PROCEEDING CONCERNING ELECTRIC RESTRUCTURING ISSUES
AND
GENERIC PROCEEDING CONCERNING THE ARIZONA INDEPENDENT
SCHEDULING ADMINISTRATOR
DOCKET NOS. E-00000A-02-0051 AND E-00000A-01-0630

Staff recommends that APS' revised Code of Conduct be adopted, except for modifications in the following areas: the designation of Pinnacle West Capital Corporation as a Competitive Electric Affiliate, Shared Services, Confidential Customer Information, Transfer of Goods and Services, Reporting Requirements, and Competitive Procurement. Staff recommends that Pinnacle West be designated as a Competitive Electric Affiliate, that a definition for Operating Employees be added to the Code of Conduct, that Operating Employees be excluded from providing Shared Services, that each employee that provides shared services be required to sign an affidavit stating that he or she will not act as a conduit for improperly sharing information, that the Code of Conduct be modified to state that the same lawyer cannot represent both sides in an arm's length transaction, and that Confidential Customer Information not be provided to others without the customer's prior written authorization.

INTRODUCTION

Q. Please state your name and business address.

A. My name is Barbara Keene. My business address is 1200 West Washington Street, Phoenix, Arizona 85007.

Q. By whom are you employed and in what capacity?

A. I am employed by the Utilities Division of the Arizona Corporation Commission as a Public Utilities Analyst Manager. My duties include supervising the energy portion of the Telecommunications and Energy Section, a copy of my résumé is provided in the Appendix.

Q. As part of your employment responsibilities, were you assigned to review matters contained in Docket Nos. E-00000A-02-0051 and E-00000A-01-0630?

A. Yes.

Q. What is the subject matter of your direct testimony?

A. My direct testimony is concerned with the Code of Conduct for Arizona Public Service Company ("APS").

Q. Have you previously prepared another document for this proceeding concerning Code of Conduct?

A. Yes. On August 13, 2003, I filed a Staff Report in these dockets that evaluated the Code of Conduct filed by APS in November 2002 and incorporated the Standards of Conduct resulting from the Track B process into the APS Code of Conduct. The Staff Report included a red-lined version of the Code of Conduct with Staff's modifications.

1 **Q. What is the purpose of your direct testimony?**

2 A. The purpose of my direct testimony is to provide Staff's response to the direct testimony
3 filed by Jeffrey B. Guldner of APS on July 29, 2005. Mr. Guldner included in his
4 testimony a revised Code of Conduct.

5
6 **Q. What is Staff's recommendation regarding APS' revised Code of Conduct?**

7 A. Staff recommends that APS' revised Code of Conduct be adopted, except for
8 modifications in the following areas: the Definitions, Shared Services, Confidential
9 Customer Information Transfer of Goods and Services, Reporting Requirements, and
10 Competitive Procurement.

11
12 **Q. What kind of analysis did you perform in this matter?**

13 A. I reviewed the current Code of Conduct, the 2002 APS-modified Code of Conduct, the
14 2003 Staff Report, Mr. Guldner's direct testimony and revised Code of Conduct, and
15 documents from the Federal Energy Regulatory Commission ("ERC") regarding the final
16 adoption of its Standards of Conduct (Order No. 2004).

17
18 **Q. With the modifications that you have proposed, does Staff believe that APS'
19 proposed Code of Conduct is reasonable and appropriate?**

20 A. Yes. The APS-proposed Code of Conduct, with Staff's modifications, provides safeguards
21 necessary to protect the public interest. The proposed Code of Conduct would help to
22 promote a level playing field in both the retail and wholesale competitive markets by
23 maintaining a separation between the utility and its competitive affiliates and by
24 preventing cross-subsidization between the utility and its competitive affiliates. The
25 current Code of Conduct addresses retail electric affiliates, but not affiliates in the
26 wholesale market.

27

1 The APS-proposed Code of Conduct improves upon the Code of Conduct previously
2 recommended by Staff in its 2003 Staff Report by being reorganized and simplified. All
3 of the items required by the Track A and Track B orders are still included, but
4 nonessential portions were eliminated. The new version should be easier for utility and
5 affiliate employees to learn and follow, while providing necessary protections.

6
7 **DEFINITIONS**

8 **Q. Does Staff have any recommendations regarding the definitions contained in APS'**
9 **proposed Code of Conduct?**

10 A. Yes, Staff has recommendations regarding the following definitions: Competitive Electric
11 Affiliate, Competitive Retail Services, and Noncompetitive Services.

12
13 **Designation of Pinnacle West Capital Corporation ("Pinnacle West") as Competitive**
14 **Electric Affiliate**

15 **Q. How does the definition of "Competitive Electric Affiliate" apply to Pinnacle West?**

16 A. The revised Code of Conduct defines Competitive Electric Affiliate as "those affiliates of
17 APS engaged in either Competitive Retail Services or Competitive Wholesale Services."
18 The term "Competitive Wholesale Services" is defined as "the provision of energy
19 products or services to the wholesale electric market." Pinnacle West provides energy to
20 wholesale customers through contracts, such as its wholesale power contract with UNS
21 Electric. Pinnacle West clearly falls within the definition of a "Competitive Electric
22 Affiliate."

23
24 **Q. What is Staff's concern with APS' interpretation of the definition of "Competitive**
25 **Electric Affiliate" in regard to Pinnacle West?**

1 A. According to Mr. Guldner, although Pinnacle West has several wholesale contracts not
2 used in providing service to APS customers, Pinnacle West would not be considered to be
3 a Competitive Electric Affiliate because it does not actively market those contracts.

4
5 Staff disagrees with this reasoning. Pinnacle West provides energy to wholesale
6 customers through contracts, such as its wholesale power contract with UNS Electric.
7 Pinnacle West has the authority to enter into new contracts or renegotiate existing
8 contracts. The purpose of the contracts is to sell energy. It does not matter whether or not
9 Pinnacle West is trying to sell the contracts to others. Pinnacle West provides
10 Competitive Wholesale Services and should, therefore, be designated as a Competitive
11 Electric Affiliate. Staff believes that Pinnacle West currently falls within APS' proposed
12 definition of "Competitive Electric Affiliate"; however, since APS apparently disagrees
13 with this conclusion, the Commission should specifically designate Pinnacle West as a
14 "Competitive Electric Affiliate" in order to clarify this issue.

15
16 **Q. Are there issues created by including Pinnacle West as a "Competitive Electric**
17 **Affiliate"?**

18 A. Staff has discussed this matter with APS, and Staff believes that APS will contend that
19 including Pinnacle West as a "Competitive Electric Affiliate" will create difficulties.
20 Specifically, APS may claim that, under its proposed Code of Conduct as currently
21 drafted, it will be unable to pay dividends to Pinnacle West if Pinnacle West falls within
22 the definition of "Competitive Electric Affiliate." Staff is not convinced that this
23 conclusion is correct or that, even if it is, the proposed Code of Conduct cannot be
24 modified to appropriately address this matter. Staff anticipates that APS will respond to
25 this issue in its testimony, and Staff is willing to evaluate that response and to reconsider
26 its position, if appropriate.
27

Definitions of "Competitive Retail Services" and "Noncompetitive Services"

Q. What are Staff's concerns regarding these definitions?

A. Both of these definitions refer to determinations made in Commission rules. To illustrate, APS' proposed Code of Conduct defines "Noncompetitive Services" as "unbundled distribution service, Standard Offer Service, and other services that have been determined to be noncompetitive services in a Commission Rule." Staff believes that defining these concepts by referring to some future "Commission Rule" is not helpful. It is possible that the Commission may make a determination about APS' noncompetitive services in a proceeding other than a rulemaking, such as a rate case or a complaint. Pursuant to the terms of APS' proposed definitions, only determinations made in a Commission rulemaking proceeding would be considered. Staff believes that this result may not give appropriate consideration to all relevant Commission determinations and therefore recommends deleting the phrase "in a Commission Rule" and replacing it with the phrase "by the Commission."

Q. Does Staff have other comments regarding these definitions?

A. Yes. Staff notes that APS Witness Guldner has testified that APS has "attempted to broaden" some of the terms in the proposed Code of Conduct "to allow a future Commission rulemaking proceeding to revise the Electric Competition Rules without requiring significant changes to the Proposed Code of Conduct." Staff does not want to leave APS, the Commission, or the public with the impression that the Code of Conduct is a static document that will not eventually require re-evaluation and review as time passes and circumstances change. The history of APS' existing Code of Conduct illustrates this phenomenon. APS' existing Code of Conduct, which was adopted in 2000 pursuant to the provisions of A.A.C. R14-2-1616, focused upon APS' conduct toward its competitive retail electric affiliate. Only two years later, Staff testified in the Track A proceeding that

1 APS' Code of Conduct should be expanded to address APS' conduct toward its
2 competitive wholesale electric affiliate.

3
4 APS' stated desire to have a Code of Conduct that will not require review and revision
5 may prove to be unreasonable as time passes and circumstances change. Staff cannot at
6 this time predict when such future changes may be necessary, but Staff is unwilling to
7 leave the impression that APS' effort to "broaden terms" is a reasonable substitute for
8 subsequent review.

9
10 **SHARED SERVICES**

11 **Q. What are Shared Services?**

12 A. Shared Services are support services provided to various Pinnacle West affiliates by
13 Pinnacle West itself or by any of its affiliates. For example, shared support staff may
14 provide legal, accounting, or data processing services to various affiliates, but support
15 staff do not participate in operating activities and generally would not be in a position to
16 give an affiliate undue preferences.

17
18 **Q. Is Staff concerned about any of the types of support services that APS included in its**
19 **definition of Shared Services?**

20 A. Yes. Staff is concerned about "risk and insurance management," "energy risk
21 management," and "law."

22
23 **Risk Management**

24 **Q. What is Staff's concern about "risk and insurance management" and "energy risk**
25 **management"?**

26 A. According to APS, "risk and insurance management" is the Shared Service that handles
27 corporate policies and claims, and "energy risk management" is a specialized risk-

1 management function that ensures that overall portfolio structure and exposure to energy
2 counterparties is appropriate on an enterprise basis. There are two issues that relate to
3 both of these areas of risk management: (1) whether they should be shared functions, and
4 (2) if so, how to handle the energy, customer, and market information received by risk
5 management employees.

6
7 **Q. Has Staff been concerned about risk management being a Shared Service?**

8 A. Yes. In the 2003 Staff Report, Staff recommended that risk management and energy risk
9 management not be considered as Shared Services. The Independent Monitor's report had
10 identified these two Shared Services as a continuing source of potential conflict during the
11 competitive procurement process resulting from Track B.

12
13 **Q. Does Staff continue to hold this position?**

14 A. No. After reviewing documents issued by FERC in its docket on Standards of Conduct,
15 Staff concluded that it is not unreasonable for Pinnacle West and its subsidiaries to
16 consider the risks that may result from the interplay between the business activities of
17 various subsidiaries within the overall Pinnacle West structure. Because there may be a
18 need for comprehensive oversight of risk management, it may be a Shared Service.
19 However, Staff is concerned that (1) shared risk management employees not be operating
20 employees of either APS or its Competitive Electric Affiliates and (2) that shared risk
21 management employees not be a conduit for improperly sharing information.

22
23 **Q. Why are these limitations on Shared Services necessary?**

24 A. Limitations on shared services are necessary to prevent affiliates from receiving undue
25 preferential treatment.
26

1 **Q. Have other regulatory agencies addressed this issue?**

2 A. Yes. FERC addressed this issue in its docket on Standards of Conduct. After reviewing
3 the comments filed by 46 entities on this topic, FERC concluded that transmission
4 providers should be allowed to realize the benefits of cost savings of sharing employees
5 when those shared employees are not operating employees and do not improperly provide
6 information between affiliates.

7
8 **Q. What are "operating employees?"**

9 A. FERC, in its Order No. 497-E regarding gas employees, has defined Operating Employees
10 as, in part, those that are engaged in the day-to-day duties and responsibility for planning,
11 directing, organizing, or carrying out gas-related operations, including gas transportation,
12 gas sales or gas marketing activities.

13
14 FERC's Order No. 2004 defines "Transmission Function employee" as "an employee,
15 contractor, consultant or agent of a Transmission Provider who conducts transmission
16 system operations or reliability functions, including, but not limited to, those who are
17 engaged in day-to-day duties and responsibilities for planning, directing, organizing or
18 carrying out transmission-related operations."

19
20 Staff recommends that a similar definition for Operating Employees, appropriate for
21 electric employees, be added to the revised Code of Conduct, and that the definition for
22 Shared Services indicate that Operating Employees are excluded from providing Shared
23 Services.

24
25 Staff suggests the following definition for "Operating Employees": "employees,
26 contractors, consultants, or agents who conduct electrical system operations or reliability
27 functions, including, those who are engaged in day-to-day duties and responsibilities for

1 planning, directing, organizing, or carrying out energy-related operations. Operating
2 Employees are excluded from providing Shared Services."

3
4 **Q. What assurance could there be that shared risk management employees would not be**
5 **a conduit for improperly sharing information?**

6 A. Each employee who provides Shared Services should be trained regarding the Code of
7 Conduct and should be required to sign an affidavit stating that he or she will not be a
8 conduit for improperly sharing information. Part Two, Section IV.G. of the revised Code
9 of Conduct should be modified to include a requirement for such signed affidavits.

10
11 **Law**

12 **Q. Has Staff been concerned about law being a Shared Service?**

13 A. Yes. In the 2003 Staff Report, Staff recommended that law not be considered as a Shared
14 Service. The Independent Monitor's report had identified this Shared Service as a
15 continuing source of potential conflict during the competitive procurement process
16 resulting from Track B.

17
18 **Q. Does Staff continue to hold this position?**

19 A. No. After reviewing FERC's comments in its Standards of Conduct proceeding, Staff
20 concluded that it is not unreasonable for law to be considered a Shared Service. FERC's
21 rationale is that lawyers have a professional responsibility to maintain the confidentiality
22 of information, and Staff finds the rationale to be reasonable.

23
24 **Q. What is Staff's remaining concern about law being a Shared Service?**

25 A. Staff is concerned that the same lawyer could represent both APS and one of its
26 Competitive Electric Affiliates in an arm's length transaction involving both entities. Part
27 Two, Section V.A. of the revised Code of Conduct should be modified to include a

1 statement that the same lawyer cannot represent both sides in an arm's length transaction
2 between APS and one of its Competitive Electric Affiliates.

3
4 **CONFIDENTIAL CUSTOMER INFORMATION**

5 **Q. What is your concern about Confidential Customer Information?**

6 A. Part Two, Section III.A. and B states that Confidential Customer Information would not
7 be provided to others without the customer's prior authorization. Staff believes that the
8 customer's authorization should be written because it provides a record that authorization
9 was actually granted. A printed version of an electronic authorization would satisfy this
10 requirement. Staff notes that the existing Code requires written authorization. Therefore,
11 the proposed Code of Conduct should be modified to include the word "written" before
12 "authorization."

13
14 **Q. Are there any other concerns?**

15 A. Although it appears to be a typo, Part Two, Section III.B. and C. contain the term
16 "Customer Confidential Information." The term should be "Confidential Customer
17 Information" to match the term in the definition section of the Code of Conduct.

18
19 **TRANSFER OF GOODS AND SERVICES**

20 **Q. Does Staff have any comments regarding the section of APS' proposed Code of**
21 **Conduct that addresses transfers of goods and services?**

22 A. Yes. Paragraph A of that section states that all transactions between APS and its
23 Competitive Electric Affiliates shall be arm's length transactions, "except as otherwise
24 provided below." Staff believes that the subsequent paragraphs do not clearly describe the
25 transactions that will not be at arm's length. For example, Paragraph D refers to "services
26 provided by APS or its Competitive Electric Affiliate that are subject to a filed tariff." A
27 purchased power contract between APS and an affiliate that provides competitive

1 wholesale services may be subject to a "tariff," such as a FERC determination allowing
2 market-based rates, yet that contract may still be a transaction that requires substantial
3 arm's length negotiations between the parties. Staff believes that this section could be
4 improved by specifically listing the types of transactions that may not be at arm's length.

5 6 **REPORTING REQUIREMENTS**

7 **Q. Does Staff have any comments regarding the reporting requirements contained in**
8 **APS' proposed Code of Conduct?**

9 A. Yes. Staff recommends that these reports be available to the public. Therefore, the words
10 "and shall be publicly available" should be added to Part Two, Section VIII, after "40-
11 204:".

12 13 **COMPETITIVE PROCUREMENT**

14 **Q. Does Staff have any changes to Part Four of APS' proposed Code of Conduct, which**
15 **deals with competitive procurement?**

16 A. Yes, Staff has one change in this part of APS' proposed Code of Conduct. In Part Four,
17 Section III.B, APS' proposal provides that "[i]f a Competitive Electric Affiliate
18 participates as a bidder in a Competitive Procurement request for proposals or auction
19 process, an independent monitor will oversee the process." Staff suggests inserting the
20 phrase "selected by Staff" after the reference to "an independent monitor." Staff believes
21 that this change is necessary to ensure that the monitor will be truly objective.

22 23 24 **SUMMARY OF STAFF RECOMMENDATIONS**

25 **Q. Please summarize Staff's recommendations.**

26 A. 1. Staff recommends that APS' revised Code of Conduct be adopted, except for
27 modifications in the following areas: Definitions, Shared Services, Confidential

1 Customer Information, Transfer of Goods and Services, Reporting Requirements,
2 and Competitive Procurement.

3 2. Staff recommends that Pinnacle West be designated as a Competitive Electric
4 Affiliate. Staff also recommends that the Commission delete the phrase "in a
5 Commission Rule" from the definitions of "Competitive Retail Services" and
6 "Noncompetitive Retail Services" and replace it with the phrase "by the
7 Commission."

8 3. Staff recommends that a definition for Operating Employees be added to the Code
9 of Conduct.

10 4. Staff recommends that Operating Employees be excluded from providing Shared
11 Services.

12 5. Staff recommends that each shared support employee should be required to sign an
13 affidavit stating that he or she will not be a conduit for improperly sharing
14 information.

15 6. Staff recommends that the Code of Conduct be modified to state that the same
16 lawyer cannot represent both APS and a Competitive Electric Affiliate in an arm's
17 length transaction.

18 7. Staff recommends that Confidential Customer Information not be provided to
19 others without the customer's prior written authorization.

20 8. Staff recommends that the Transfer of Goods and Services section be improved by
21 specifically listing the types of transactions that may not be at arm's length.

22 9. Staff recommends that reports be publicly available.

23 10. Staff recommends that the Competitive Procurement section be modified to state
24 that an independent monitor would be selected by Staff.

25
26 **Q. Does this conclude your direct testimony?**

27 **A.** Yes, it does.

RESUME

BARBARA KEENE

Education

B.S. Political Science, Arizona State University (1976)
M.P.A. Public Administration, Arizona State University (1982)
A.A. Economics, Glendale Community College (1993)

Additional Training

Management Development Program - State of Arizona, 1986-1987

UPLAN Training - LCG Consulting, 1989, 1990, 1991

various seminars, workshops, and conferences on ratemaking, energy efficiency, rate design, computer skills, labor market information, training trainers, and Census products

Employment History

Arizona Corporation Commission, Utilities Division, Phoenix, Arizona: Public Utilities Analyst Manager (May 2005-present). Supervise the energy portion of the Telecommunications and Energy Section. Conduct economic and policy analyses of public utilities. Coordinate working groups of stakeholders on various issues. Prepare Staff recommendations and present testimony on electric resource planning, rate design, special contracts, energy efficiency programs, and other matters. Responsible for maintaining and operating UPLAN, a computer model of electricity supply and production costs.

Arizona Corporation Commission, Utilities Division, Phoenix, Arizona: Public Utilities Analyst V (October 2001-present), Senior Economist (July 1990-October 2001), Economist II (December 1989-July 1990), Economist I (August 1989-December 1989). Conduct economic and policy analyses of public utilities. Coordinate working groups of stakeholders on various issues. Prepare Staff recommendations and present testimony on electric resource planning, rate design, special contracts, energy efficiency programs, and other matters. Responsible for maintaining and operating UPLAN, a computer model of electricity supply and production costs.

Arizona Department of Economic Security, Research Administration, Economic Analysis Unit: Labor Market Information Supervisor (September 1985-August 1989), Research and

Statistical Analyst (September 1984-September 1985), Administrative Assistant (September 1983-September 1984). Supervised professional staff engaged in economic research and analysis. Responsible for occupational employment forecasts, wage surveys, economic development studies, and over 50 publications. Edited the monthly **Arizona Labor Market Information Newsletter**, which was distributed to about 4,000 companies and individuals.

Testimony

Resource Planning for Electric Utilities (Docket No. U-0000-90-088), Arizona Corporation Commission, 1990; testimony on production costs and system reliability.

Trico Electric Cooperative Rate Case (Docket No. U-1461-91-254), Arizona Corporation Commission, 1992; testimony on demand-side management and time-of-use and interruptible power rates.

Navopache Electric Cooperative Rate Case (Docket No. U-1787-91-280), Arizona Corporation Commission, 1992; testimony on demand-side management and economic development rates.

Arizona Electric Power Cooperative Rate Case (Docket No. U-1773-92-214), Arizona Corporation Commission, 1993; testimony on demand-side management, interruptible power, and rate design.

Tucson Electric Power Company Rate Case (Docket Nos. U-1933-93-006 and U-1933-93-066) Arizona Corporation Commission, 1993; testimony on demand-side management and a cogeneration agreement.

Resource Planning for Electric Utilities (Docket No. U-0000-93-052), Arizona Corporation Commission, 1993; testimony on production costs, system reliability, and demand-side management.

Duncan Valley Electric Cooperative Rate Case (Docket No. E-01703A-98-0431), Arizona Corporation Commission, 1999; testimony on demand-side management and renewable energy.

Tucson Electric Power Company vs. Cyprus Sierrita Corporation, Inc. (Docket No. E-0000I-99-0243), Arizona Corporation Commission, 1999; testimony on analysis of special contracts.

Arizona Public Service Company's Request for Variance (Docket No. E-01345A-01-0822), Arizona Corporation Commission, 2002; testimony on competitive bidding.

Generic Proceeding Concerning Electric Restructuring Issues (Docket No. E-00000A-02-0051), Arizona Corporation Commission, 2002; testimony on affiliate relationships and codes of conduct.

Tucson Electric Power Company's Application for Approval of New Partial Requirements Service Tariffs, Modification of Existing Partial Requirements Service Tariff 101, and Elimination of Qualifying Facility Tariffs (Docket No. E-01933A-02-0345) and Application for Approval of its Stranded Cost Recovery (Docket No. E-01933A-98-0471), Arizona Corporation Commission, 2002, testimony on proposals to eliminate, modify, or introduce tariffs and testimony on the modification of the Market Generation Credit.

Arizona Public Service Company's Application for Approval of Adjustment Mechanisms (Docket No. E-01345A-02-0403), Arizona Corporation Commission, 2003, testimony on the proposed Power Supply Adjustment and the proposed Competition Rules Compliance Charge.

Generic Proceeding Concerning Electric Restructuring Issues, et al (Docket No. E-00000A-02-0051, et al), Arizona Corporation Commission, 2003; Staff Report on Code of Conduct.

Arizona Public Service Company Rate Case (Docket No. E-01345A-03-0437), Arizona Corporation Commission, 2004; testimony on demand-side management, system benefits, renewable energy, the Returning Customer Direct Assignment Charge, and service schedules.

Arizona Electric Power Cooperative Rate Case (Docket No. E-01773A-04-0528), Arizona Corporation Commission, 2005; testimony on a fuel and purchased power cost adjustor, demand-side management, and rate design.

Trico Electric Cooperative Rate Case (Docket No. E-01461A-04-0607), Arizona Corporation Commission, 2005; testimony on the Environmental Portfolio Standard; demand-side management; special charges; and Rules, Regulations, and Line Extension Policies.

Publications

Author of the following articles published in the *Arizona Labor Market Information Newsletter*:

- "1982 Mining Employees - Where are They Now?" - September 1984
- "The Cost of Hiring" and "Arizona's Growing Industries" - January 1985
- "Union Membership - Declining or Shifting?" - December 1985
- "Growing Industries in Arizona" - April 1986
- "Women's Work?" - July 1986
- "1987 SIC Revision" - December 1986
- "Growing and Declining Industries" - June 1987
- "1986 DOT Supplement" and "Consumer Expenditure Survey" - July 1987
- "The Consumer Price Index: Changing With the Times" - August 1987
- "Average Annual Pay" - November 1987
- "Annual Pay in Metropolitan Areas" - January 1988
- "The Growing Temporary Help Industry" - February 1988

"Update on the Consumer Expenditure Survey" - April 1988
"Employee Leasing" - August 1988
"Metropolitan Counties Benefit from State's Growing Industries" - November 1988
"Arizona Network Gives Small Firms Helping Hand" - June 1989

Major contributor to the following books published by the Arizona Department of Economic Security:

Annual Planning Information - editions from 1984 to 1989
Hispanics in Transition - 1987

(with David Berry) "Contracting for Power," *Business Economics*, October 1995.

(with Robert Gray) "Customer Selection Issues," *NRRI Quarterly Bulletin*, Spring 1998.

Reports

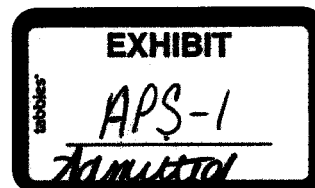
(with Task Force) *Report of the Task Force on the Feasibility of Implementing Sliding Scale Hookup Fees*. Arizona Corporation Commission, 1992.

Customer Repayment of Utility DSM Costs, Arizona Corporation Commission, 1995.

(with Working Group) *Report of the Participants in Workshops on Customer Selection Issues*," Arizona Corporation Commission, 1997.

"DSM Workshop Progress Report," Arizona Corporation Commission, 2004.

(with Erin Casper) "Staff Report on Demand Side Management Policy," Arizona Corporation Commission, 2005.



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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER, Chairman
MARC SPITZER
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES

IN THE MATTER OF THE GENERIC
PROCEEDING CONCERNING ELECTRIC
RESTRUCTURING ISSUES.

DOCKET NO. E-00000A-02-0051

IN THE MATTER OF THE GENERIC
PROCEEDING CONCERNING THE
ARIZONA INDEPENDENT SCHEDULING
ADMINISTRATOR.

DOCKET NO. E-00000A-01-0630

NOTICE OF FILING TESTIMONY

Arizona Public Service Company ("APS") hereby files the Direct Testimony of Jeffrey B. Guldner, which includes at Schedule JBG-1 the APS Proposed Code of Conduct, pursuant to the Procedural Order dated May 3, 2005.

RESPECTFULLY SUBMITTED this 29th day of July, 2005.

PINNACLE WEST CAPITAL
CORPORATION LAW DEPARTMENT

By Karilee S. Ramaley
Karilee S. Ramaley
Thomas L. Mumaw

SNELL & WILMER


Deborah R. Scott
Attorneys for Arizona Public
Service Company

1 The original and 10 copies of the
2 foregoing were filed this 29th day
3 of July, 2005 with:

4 Docket Control
5 Arizona Corporation Commission
6 1200 West Washington
Phoenix, AZ 85007.

7 Copies of the foregoing mailed, faxed or
8 transmitted electronically this
9 29nd day of July, 2005 to:

10 All parties of record.

11 
12 Vicki DiCola

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TESTIMONY OF JEFFREY B. GULDNER

On Behalf of Arizona Public Service Company

Docket No. E-00000A-02-0051

Docket No. E-00000A-01-0630

July 29, 2005

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PROPOSED CODE OF CONDUCT.....	Schedule JBG-1

1 **TESTIMONY OF JEFFREY B. GULDNER**
2 **ON BEHALF OF ARIZONA PUBLIC SERVICE COMPANY**
3 **(Docket No. E-00000A-02-0051)**
 (Docket No. E-00000A-01-0630)

4 I. INTRODUCTION

5 Q. **PLEASE STATE YOUR NAME, ADDRESS AND OCCUPATION.**

6 A. My name is Jeffrey B. Guldner. I am the Director of Regulatory Compliance for
7 Arizona Public Service Company ("APS" or "Company"). In that role, I
8 supervise the implementation of the Code of Conduct at APS, as well as
9 supervise APS' compliance with the Federal Energy Regulatory Commission's
10 ("FERC") Standards of Conduct and the FERC Codes of Conduct applicable to
11 APS and its affiliates. My business address is 400 North 5th Street, MS 9795,
12 Phoenix, Arizona, 85004.

13
14 Q. **WHAT IS YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND?**

15 A. I received a B. A. in Political Science from the University of Iowa in 1987. I
16 received a J. D., *magna cum laude*, from the Arizona State University College of
17 Law in 1996. From 1996 until 2004, I was an associate and then a partner with
18 the law firm Snell & Wilmer LLP, in Phoenix, Arizona. My practice was
19 concentrated in energy law, energy project finance, and public utility law. While
20 practicing law, I represented APS, other public utilities, and investors in state
21 and federal regulatory proceedings and transactions involving utility rate and
22 service matters, generation and transmission facilities siting, electric industry
23 restructuring, resource planning and prudence reviews. Prior to attending law
24 school, I was a Surface Warfare Officer in the U.S. Navy. I served on active duty
25 from 1987 to 1993 and in the Naval Reserve from 1993 to 1998.
26

1 II. SUMMARY OF TESTIMONY

2 Q. PLEASE SUMMARIZE YOUR TESTIMONY.

3 A. There have been many changes since APS' original Code of Conduct was
4 approved in 2000 (the "2000 Code of Conduct"). In the Track A Order, Decision
5 No. 65154 (September 10, 2002), the Arizona Corporation Commission
6 ("Commission") directed APS to submit modifications to the 2000 Code of
7 Conduct to expand its application to APS' interactions with an affiliate from
8 which it wants to purchase power, as opposed to just APS' retail electric affiliate.
9 APS submitted a proposed Code of Conduct on November 12, 2002 (the
10 "November 2002 Code of Conduct") and the Commission's Utilities Division
11 Staff filed a Staff Report on the November 2002 Code of Conduct on August 13,
12 2003. Prior to a hearing on the November 2002 Code of Conduct, a stay was
13 issued until after the Commission decided APS' then-pending rate case and ruled
14 on APS' request to acquire and rate base the Pinnacle West Energy Corporation
15 ("PWEC") Arizona assets.

16 The acquisition and rate basing of PWEC's Arizona assets was approved in
17 Decision No. 67744 (April 7, 2005). In addition, PWEC and its subsidiary
18 GenWest, LLC ("GenWest") have an agreement in place to sell their Silverhawk
19 Power Plant in Nevada to Nevada Power Company.¹ When these transactions
20 are complete, PWEC will no longer own any generation. These changes dispel
21 much of the concern reflected in the Track A and Track B decisions about APS'
22 dealings with wholesale electric affiliates. Also, the rate case settlement as
23
24

25 ¹ At the time this testimony was prepared, the agreement was pending Nevada Public Utilities
26 Commission and FERC approval.

1 approved by the Commission included specific requirements relating to
2 competitive wholesale procurement by APS.

3 Another issue impacting this proceeding is the uncertain status of retail electric
4 competition in Arizona. As a result of the Arizona Court of Appeals' *Phelps*
5 *Dodge* opinion in 2004,² many of the Electric Competition Rules were either
6 vacated or remanded. Also as a result of that ruling, there currently are no
7 certificated Electric Service Providers ("ESPs") in Arizona. Through the Electric
8 Competition Advisory Group, the Commission has commenced a process to
9 review and potentially modify the rules.

10
11 APS considered all of these developments in revising the November 2002 Code
12 of Conduct. APS also sought to simplify and streamline the November 2002
13 Code of Conduct to create a more practically functional and understandable
14 document. The Code of Conduct that APS is proposing is attached to my
15 testimony as Schedule JBG-1 (the "Proposed Code of Conduct").

16 The vast majority of the substantive provisions in the 2000 Code of Conduct and
17 the November 2002 Code of Conduct are unchanged. However, the Proposed
18 Code of Conduct reflects the following:

- 19
- 20 • The Code is divided into four sections – Definitions, Basic Principles,
21 Retail Electric Competition, and Competitive Procurement – to facilitate
22 better training, implementation, and employee understanding of the Code.
- 23

24

25 ² *Phelps Dodge Corp. v. Arizona Corporation Commission*, 1 CA-CV 01-0068 (January 27, 2004), review
26 denied (2004).

- 1 • References to specific Electric Competition Rules have been eliminated.
2 This provides flexibility for incorporating changes to these rules that the
3 Commission may make in the future.
- 4 • Some definitions have been revised to make them simpler to understand
5 or have been eliminated because they were duplicative or could be
6 included directly in the text.
- 7 • Certain provisions were modified or reorganized to promote
8 straightforward application when possible.
- 9 • A new section specifically covering Competitive Procurement has been
10 added to reflect the procurement-related provisions in Decision No.
11 67744.
12 67744.

13
14 With these changes, the Proposed Code of Conduct continues to address retail
15 electric affiliate concerns that were the core of Rule 1616³ – potential cross-
16 subsidization and unfair discrimination – and addresses the affiliate issues
17 discussed in the Track A and Track B proceedings relating to wholesale
18 procurement.

19 III. PROCEDURAL BACKGROUND

20 Q. **PLEASE DISCUSS THE PROCEDURAL BACKGROUND OF APS'**
21 **PROPOSED CODE OF CONDUCT.**

22 A. APS currently has in place the 2000 Code of Conduct that was approved by the
23 Commission in Decision No. 62416 (April 3, 2000). The 2000 Code of Conduct
24 primarily governs APS' interactions with its competitive retail ESP affiliates.

25
26

 ³ A.A.C. R14-2-1616 (Code of Conduct).

1 The only ESP affiliate of APS was APS Energy Services ("Energy Services").
2 As discussed previously, Energy Services is no longer authorized to provide, and
3 does not provide, competitive retail electric service in Arizona, although it does
4 provide other services.

5 In the Track A Order, Decision No. 65154 (September 10, 2002), the
6 Commission directed APS to submit modifications to the 2000 Code of Conduct
7 to address certain recommendations made by Staff. Those modifications were to
8 expand the 2000 Code of Conduct to govern APS' interactions with all of its
9 competitive electric affiliates, not just retail ESP affiliates. The Commission also
10 directed Tucson Electric Power Company ("TEP") to submit similar
11 modifications to its Code of Conduct.
12

13 APS proposed modifications to its 2000 Code of Conduct in the November 2002
14 Code of Conduct. Staff submitted a Staff Report that addressed APS' proposed
15 modifications on August 13, 2003. The Staff Report included Staff's suggested
16 changes to APS' November 2002 Code of Conduct. The Staff Report also
17 included Staff's recommendations on changes to the Code of Conduct following
18 the Track B competitive solicitation, in which an APS affiliate had participated.
19 Finally, the Staff Report concluded that no changes to TEP's Code of Conduct
20 were necessary, based on the conclusion that TEP had no competitive retail or
21 wholesale affiliates. A hearing on APS' Code of Conduct was scheduled for
22 November 2003.

23 In late 2003, however, the APS rate case was pending before the Commission.
24 That rate case included a proposal by APS to acquire and rate base the PWEC
25 Arizona assets. Recognizing that if the Commission approved APS' rate-basing
26

1 proposal, some issues that had prompted the need to submit modifications to the
2 2000 Code of Conduct could be eliminated or at least narrowed, APS proposed
3 and the other parties supported a procedural stay until after the rate case. On
4 October 3, 2003, the Administrative Law Judge issued a procedural order that
5 adopted the parties' recommendation that the hearing on proposed modifications
6 to APS' Code of Conduct be delayed until after the Commission's decision in
7 the then-pending APS rate case.

8 The Commission issued its final decision in APS' rate case in Decision No.
9 67744. Following a procedural conference in this docket held on April 27, 2005,
10 the current schedule for submitting the Proposed Code of Conduct was adopted.
11 APS provided a draft of its Proposed Code of Conduct to Staff, RUCO, TEP,
12 Panda Gila River, and the Arizona Competitive Power Alliance prior to filing
13 this testimony to seek and consider comments from these parties. Changes to the
14 draft were made to incorporate some of the comments that APS received or to
15 make clarifications based on these comments.

16
17 **Q. IN ADDITION TO THE RATEBASING DECISION, HAVE OTHER**
18 **CHANGES OCCURRED THAT RELATE TO THE CODE OF**
CONDUCT?

19 **A.** Yes. Three other significant developments relate to APS' modifications to the
20 Code of Conduct. First, the Arizona Court of Appeals issued a final opinion on
21 the appeals to the Electric Competition Rules litigation from 1998 to 2002.
22 Although that decision did not vacate Rule 1616, it reversed some of the Rules
23 on substantive grounds and reversed other rules on procedural grounds. It also
24 voided the Certificates of Convenience and Necessity that had been issued to
25 ESPs under the Electric Competition Rules. The Commission's Electric
26 Competition Advisory Group is currently reviewing the Rules.

1 Second, a key component of the Settlement that the Commission approved in
2 Decision No. 67744 was the inclusion of several provisions addressing APS'
3 competitive wholesale procurement going forward. If competitive procurement
4 is to be addressed in the Proposed Code of Conduct, it should reflect these
5 provisions from the Settlement Agreement.

6 Third, PWEC and its subsidiary, GenWest, LLC, have announced the sale of the
7 Silverhawk Power Plant to Nevada Power Company. When consummated, this
8 sale means that neither PWEC nor GenWest will own any generation assets or
9 wholesale contracts.

10
11 IV. THE PROPOSED CODE OF CONDUCT

12 Q. **IS APS PROPOSING TO CHANGE ANY OF THE CORE PRINCIPLES**
13 **FROM EITHER ITS 2000 CODE OF CONDUCT OR ITS NOVEMBER**
14 **2002 CODE OF CONDUCT?**

15 A. No. The Proposed Code of Conduct includes provisions to address each of the
16 specific requirements set forth in Rule 1616. This rule embodies two
17 fundamental principles – the prevention of both potential cross-subsidization of
18 competitive electric affiliates by APS and unfair discrimination. Other than some
19 reorganization and clarification, the Proposed Code of Conduct contains the
20 same provisions regarding cross-subsidization and unfair discrimination
21 included in the 2000 Code of Conduct and the Company's November 2002
22 proposal.

23 Q. **WHAT ARE THE CHANGES IN APS' PROPOSED CODE OF**
24 **CONDUCT?**

25 A. Like the November 2002 Code of Conduct, the Proposed Code of Conduct
26 expands the scope of the original 2000 Code of Conduct to include both retail
and wholesale electric affiliates as "Competitive Electric Affiliates." The most

1 significant changes from the November 2002 Code of Conduct are the new
2 provisions regarding Competitive Procurement that reflect the procurement
3 principles in Decision No. 67744. The other changes in the Proposed Code of
4 Conduct are primarily organizational, with some simplification of language.
5 APS also attempted to broaden some of the terms to allow a future Commission
6 rulemaking proceeding to revise the Electric Competition Rules without
7 requiring significant changes to the Proposed Code of Conduct.

8
9 **Q. HOW DOES THE PROPOSED CODE OF CONDUCT DEFINE COMPETITIVE ELECTRIC AFFILIATES?**

10 A. The Proposed Code of Conduct defines Competitive Electric Affiliates as
11 affiliates of APS engaged in Competitive Retail Services or Competitive
12 Wholesale Services. Competitive Retail Services are essentially retail services
13 that would be provided by ESPs. Energy Services was the only affiliate that
14 provided Competitive Retail Services. Competitive Wholesale Services are
15 defined as the provision of energy products or services to the wholesale market.
16 As intended by the Proposed Code of Conduct, this would include actively
17 selling products such as generation or purchased power agreements in wholesale
18 electric markets. Historically, PWEC, GenWest and Energy Services have
19 provided Competitive Wholesale Services. It would not, however, include an
20 affiliate that holds existing wholesale contracts but does not actively market
21 these contracts. Thus, although Pinnacle West Capital Corporation has several
22 wholesale contracts not used in providing service to APS customers, it would
23 not be a Competitive Electric Affiliate unless it actively marketed those
24 contracts to APS or others in the wholesale market.
25
26

1 **Q. ARE SHARED SERVICES INCLUDED IN THE CODE OF CONDUCT?**

2 A. Yes. As in the 2000 Code of Conduct and the November 2002 Proposed Code of
3 Conduct, shared services is a core provision. The Proposed Code of Conduct
4 recognizes that shared support services, which are defined in the Proposed Code
5 of Conduct, may be provided by Pinnacle West or APS as long as the costs of
6 such services are accounted for in accordance with the Code of Conduct and the
7 Policies and Procedures. Consistent with the November 2002 Proposed Code of
8 Conduct, APS may provide shared services to affiliates. This is necessary
9 because in the corporate restructuring following the Commission's Track A
10 decision most of the shared services that had been at Pinnacle West were moved
11 back to APS.

12 **Q. HOW ARE SHARED SERVICES ADDRESSED IN THE PROPOSED**
13 **CODE OF CONDUCT?**

14 A. The Proposed Code of Conduct identifies a number of specific activities that are
15 recognized as shared services. These services, if provided to Competitive
16 Electric Affiliates by APS, require appropriate cost allocations. In addition, there
17 are restrictions on information sharing to protect against confidential
18 information of APS being provided to Competitive Electric Affiliates. These
19 types of restrictions are very similar to the restrictions imposed by FERC under
20 its Standards of Conduct for transmission providers. Some shared services will
21 require additional discussion in the Policies and Procedures to address specific
22 procedures regarding confidential information.

23 **Q. IS RISK MANAGEMENT AN APPROPRIATE SHARED SERVICE?**

24 A. Yes, but there are really two types of risk management in the Code of Conduct.
25 The first, which is "risk and insurance management, claims services and public
26

1 safety" is simply the shared service that handles corporate insurance policies and
2 claims. It is very similar to shared human resources or shared health and safety
3 types of services and does not address energy risk management.

4 Energy risk management is a distinct, specialized risk-management function. It
5 is necessary to ensure that overall portfolio structure and exposure to energy
6 counterparties is appropriate and manageable on an *enterprise* basis and that a
7 default by an unaffiliated third party supplier will not cause a catastrophic
8 impact to APS or Pinnacle West. For example, corporate oversight of energy
9 risk management ensures that the enterprise is not subject to a massive dollar
10 loss or a credit downgrade because a Competitive Electric Affiliate has excess
11 exposure on an unsecured contract with a defaulting counterparty. Such an
12 approach is consistent with established best practices for overseeing energy risk
13 management and is an important element of the overall control environment
14 required to comply with the Sarbanes Oxley Act. The necessity of such
15 consolidated risk management was highlighted by the defaults that shook the
16 industry after Enron and other trading firms collapsed, defaulting on billions of
17 dollars of contracts.

18
19 Both FERC and the Committee of Chief Risk Officers, which has taken a lead
20 role in addressing energy risk management issues in the post-Enron era, have
21 recognized the need for common corporate oversight of enterprise energy risk
22 management, acknowledging the need for appropriate protections on
23 information sharing. For example, the enterprise risk management function is
24 functionally separate from the trading floor. It can be provided at the enterprise
25 level without disclosing confidential information of APS to Competitive Electric
26 Affiliates.

1 **Q. IS LAW A SHARED SERVICE?**

2 A. Yes. Law was an appropriate shared service under the Commission-approved
3 2000 Code of Conduct and still is. FERC also recognizes legal services as an
4 appropriate shared service under the FERC Standards of Conduct. Like other
5 shared services, there are restrictions on information sharing that would also
6 apply to the Law Department. For example, the Competitive Procurement
7 provisions of the Proposed Code of Conduct require that personnel conducting
8 or advising APS in a competitive solicitation cannot have contact with a
9 Competitive Electric Affiliate bidding in such a solicitation. Thus, if a
10 Competitive Electric Affiliate were in the future to submit a bid to APS, a lawyer
11 in the Pinnacle West Law Department could not represent both APS and the
12 Competitive Electric Affiliate, nor could lawyers act as a conduit of information
13 regarding the bid. In addition, lawyers providing shared services are, of course,
14 subject to ethics rules and standards that apply to all practicing lawyers.

15 **Q. DO BOTH THE 2000 CODE OF CONDUCT AND THE PROPOSED**
16 **CODE OF CONDUCT PERMIT COMMON OFFICERS AND**
17 **DIRECTORS?**

18 A. Yes. The appointment of common officers and directors, with some restrictions,
19 was recognized as appropriate in the original 2000 Code of Conduct. It is even
20 more important in today's environment of increased corporate accountability
21 and oversight and measures such as Sarbanes-Oxley. As in any corporate
22 structure, officers and the Board of Directors are accountable for the activities of
23 the enterprise. To balance the need for corporate governance and the protection
24 of confidential information, the Proposed Code of Conduct continues to prohibit
25 APS officers and directors that are directly responsible for operational matters
26 from serving as officers or directors of a Competitive Electric Affiliate. Thus,

1 the Vice President of Fossil Generation could not also be a director of Energy
2 Services. Such a structure is similar to how the FERC Standards of Conduct
3 address common officers and directors. In addition, the Proposed Code of
4 Conduct prohibits common officers and directors, and every other employee,
5 from acting as a conduit of confidential information to a Competitive Electric
6 Affiliate, or from directly participating in a competitive procurement process if a
7 Competitive Electric Affiliate were a bidder.

8
9 **Q. WHAT NEW PROVISIONS HAS APS INCLUDED IN THE PROPOSED
CODE OF CONDUCT REGARDING COMPETITIVE PROCUREMENT?**

10 A. The competitive procurement provisions are set forth in Part Four of the
11 Proposed Code of Conduct. These provisions are divided into three sections. The
12 first section, "Applicability," discusses when the competitive procurement
13 provisions apply. The competitive procurement provisions apply to all wholesale
14 purchases of energy, capacity or physical hedges for APS Standard Offer
15 customers, except in an emergency or in cases where system reliability requires
16 a deviation. The "Applicability" section also clarifies that the competitive
17 procurement provisions do not apply to the participation of a competitive
18 electric affiliate in Demand Side Management ("DSM") programs or
19 Environmental Portfolio Standard ("EPS") programs. The Proposed Code of
20 Conduct specifically states, however, that APS cannot give preferential
21 treatment to an affiliate in any DSM or EPS procurement. The second section
22 discusses acceptable procurement methods, and restates the Track B Secondary
23 Procurement Protocols that were incorporated into the competitive procurement
24 provisions in Decision No. 67744. The only change to those Protocols is to
25 clarify that Requests for Proposals and auctions are acceptable procurement
26

1 methods, rather than just descending clock auctions referenced in the original
2 Secondary Procurement Protocols. The third section addresses the requirements
3 that apply if an affiliate participates in a competitive procurement. As provided
4 in the Settlement Agreement, such participation would require an independent
5 monitor. Also, this section includes recordkeeping requirements, separation
6 requirements, and a requirement for disclosure of bid-related communications
7 with an affiliate to other bidders.

8
9 **Q. ARE THE COMPETITIVE PROCUREMENT PROVISIONS OF THE
10 PROPOSED CODE OF CONDUCT INTENDED TO CHANGE ANY
11 PROVISION OF THE RATE CASE SETTLEMENT AGREEMENT?**

12 A. No. Affiliates could not bid in the 1,000 MW Request for Proposals that is in
13 progress, nor is the Proposed Code of Conduct intended to alter the self-build
14 restrictions reflected in Decision No. 67744.

15
16 **Q. IS THERE AN AFFILIATE OF APS THAT COULD PARTICIPATE IN A
17 FUTURE COMPETITIVE PROCUREMENT PROCESS?**

18 A. Because PWEC will no longer own generation after the Silverhawk sale is
19 closed, it is unlikely that an affiliate of APS could or would bid in a competitive
20 procurement process such as the reliability request for proposals currently
21 pending. It is possible that an affiliate of APS could propose or participate in a
22 DSM program or an EPS project. In any event, because the Proposed Code of
23 Conduct is intended to be a long-term document, APS was seeking to
24 incorporate principles for potential affiliate involvement in competitive
25 procurement processes in the Proposed Code of Conduct as we believe was
26 intended by the Track B order.

1 **Q. HOW IS THE PROPOSED CODE OF CONDUCT ORGANIZED?**

2 A. The Proposed Code of Conduct now is organized into four parts – Definitions,
3 Basic Principles, Retail Electric Competition, and Competitive Procurement.

4 **Q. WHY DID APS REORGANIZE THE PROPOSED CODE OF CONDUCT**
5 **INTO THESE FOUR PARTS?**

6 A. This reorganization was viewed as important because of the expanded scope and
7 application of the Code. An employee in APS' call center who has contact with
8 APS customers must know and understand the retail competition provisions of
9 the Code, but would have no involvement in competitive power procurement.
10 Similarly, an APS accountant needs to understand affiliate pricing issues, but not
11 how a competitive procurement process must be implemented. Separating the
12 Code into four parts allows for more focused training where possible and better
13 employee understanding of the Code provisions relevant to their specific job
14 responsibilities. Certain employees, of course, will continue to require training
15 on all sections of the Code.

16 **Q. PLEASE DISCUSS WHAT IS INCLUDED IN EACH OF THESE FOUR**
17 **PARTS.**

18 A. The definitions used in the Proposed Code of Conduct are consolidated in Part
19 One. Part Two, "Basic Principles," includes key principles that apply generally
20 to APS employees and activities. For example, the affiliate pricing, separation,
21 confidentiality, compliance and administrative requirements for the Proposed
22 Code of Conduct are all included in Part Two. Part Two also contains a general
23 statement that APS shall not give preferential treatment to a Competitive
24 Electric Affiliate. Specific non-discrimination provisions are then included in
25 both the Retail Competition provisions and the Competitive Procurement
26 provisions. Also, Part Two discusses the applicability of the Proposed Code of

1 Conduct, and provides an exception for system emergencies. Part Three contains
2 specific requirements that apply to Retail Electric Competition activities.
3 Finally, as discussed earlier in my testimony, Part Four addresses Competitive
4 Procurement of wholesale power.

5 **Q. DID APS MAKE CHANGES TO THE DEFINITIONS?**

6 A. Yes, but those changes were not intended to be substantive changes. In some
7 cases, definitions were simplified to allow better employee understanding. In
8 other cases, APS eliminated a definition that was only used in one particular
9 section of the Code. For example, the November 2002 Code of Conduct had a
10 definition for "Bill" but it only applied to the consolidated billing provisions of
11 the Code. The meaning of the term is more likely to be understood if it can be
12 explained in the provision to which it applied. Thus, we defined what was meant
13 by the "bill" in the specific provisions for consolidated billing.
14

15 **Q. THE EARLIER CODES OF CONDUCT CONTAINED SPECIFIC**
16 **REFERENCES TO SOME OF THE ELECTRIC COMPETITION RULES**
IN DEFINITIONS. WHAT DID APS DO WITH THESE DEFINITIONS?

17 A. One of APS' objectives in the Proposed Code of Conduct is to include enough
18 flexibility that the Commission and the Electric Competition Advisory Group
19 can modify the Electric Competition Rules without requiring significant
20 revisions to the Proposed Code of Conduct. Employee understanding and
21 knowledge of the Code of Conduct, as well as training methods, will be better if
22 the document adopted in this proceeding requires no or minimal modifications
23 to reflect any changes to the Electric Competition Rules. Because the basic
24 principles of retail electric competition are generally understood, it should be
25 possible to use generic definitions even though the Commission's rules may in
26 the future provide more precision. For example, we are proposing to define

1 "Competitive Retail Services" as "unbundled generation, unbundled metering,
2 unbundled meter reading, and any other retail electric services that have been
3 determined to be competitive services in a Commission Rule." Under this
4 definition, once the Commission finalizes a rule that defines "Competitive Retail
5 Services" to include any of the listed services, those services would be subject to
6 the Code of Conduct without having to modify the Proposed Code of Conduct.
7 Of course, if the Commission determines that a change to the Code of Conduct
8 is necessary as a result of future changes to the Electric Competition Rules, APS
9 will prepare modifications to reflect that change.

10 **Q. IN THE 2000 CODE OF CONDUCT, CERTAIN DEFINITIONS AND**
11 **PROVISIONS ARE FURTHER CLARIFIED IN THE POLICIES AND**
12 **PROCEDURES. DO YOU ANTICIPATE THE SAME WITH THE**
13 **PROPOSED CODE OF CONDUCT?**

14 **A.** Yes. As with the 2000 Code of Conduct, APS anticipates that certain definitions
15 and provisions will be further clarified in the Policies and Procedures, which
16 provide the details for implementing the Code of Conduct. For example, the
17 definition of "Shared Services" would be clarified as needed in the Policies and
18 Procedures as it was for the 2000 Code of Conduct. Also, restrictions on
19 information sharing for such activities as energy risk management, shared legal
20 services and common officers and directors would be clarified in the Policies
21 and Procedures.

22 **Q. WHAT OTHER CHANGES WERE MADE TO THE PROPOSED CODE**
23 **OF CONDUCT?**

24 **A.** As I noted earlier, many of the changes are just streamlining and clarifications.
25 For example, the November 2002 Code of Conduct contained a section titled
26 "Treatment of Similarly Situated Persons" with provisions relating to non-
discrimination in the application of APS' retail tariffs and non-discrimination in

1 wholesale competitive procurement. To streamline this section, the Proposed
2 Code of Conduct contains a section in Part Two, Basic Principles entitled "No
3 Discrimination in Service." which generically states the non-discrimination
4 principle. The specific non-discrimination provisions relating to retail tariffs
5 were then moved to the Retail Electric Competition part of the Proposed Code
6 of Conduct, and specific provisions for non-discrimination in competitive
7 procurement were included in the Competitive Procurement part of the Proposed
8 Code of Conduct.

9
10 **Q. THE PROPOSED CODE OF CONDUCT ELIMINATES A SECTION OF**
11 **THE NOVEMBER 2002 CODE OF CONDUCT REGARDING**
12 **"FINANCING ARRANGEMENTS." WHY?**

13
14 A. That is another example of streamlining the Proposed Code of Conduct and
15 making it more accessible for the typical employee that will read it. The
16 "Financing Arrangements" provision stated that "APS shall comply with the
17 applicable provisions of A.R.S. §§ 40-285; 40-301, et seq.; and A.A.C. R14-2-
18 804 with respect to any financing arrangement between it and its Competitive
19 Electric Affiliates." That provision is simply a statement of the law, which
20 applies to APS regardless of the Code of Conduct. The employees and lawyers
21 who prepare such financing arrangements are aware of the law, and APS
22 believed it was unnecessary to risk confusing other employees with statutory
23 and rule references to these already-applicable provisions.

24
25 **Q. HOW WOULD TRAINING ON THE PROPOSED CODE OF CONDUCT**
26 **BE PROVIDED?**

A. The training plan would be addressed in a Policy and Procedure. I expect that it
would be similar to (and in some cases combined with) the FERC Standards of
Conduct training. A computer-based training ("CBT") module would be

1 developed. similar to the one used for the 2000 Code of Conduct. After
2 presenting the training material, the CBT course will require employees to
3 answer a series of questions correctly to ensure they understand the material. It
4 also requires employees to acknowledge that they understand and will comply
5 with the Code of Conduct. A shorter module may be developed for periodic
6 refresher training. For employees with more direct exposure to Code of Conduct
7 issues, such as call center employees or lawyers or personnel working on APS
8 competitive procurements, more detailed and targeted training is provided
9 through seminars, presentations, or even individually in some cases. In addition,
10 basic Code of Conduct information is provided in Pinnacle West's "Doing the
11 Right Thing" ethics training, to new employees at employee orientation, and in
12 leadership academies. This training is complemented by written materials that
13 are periodically prepared such as Frequently Asked Questions documents or
14 articles in internal publications. In all cases, a significant emphasis is placed on
15 ensuring that employees know who or where to call to ask questions and receive
16 guidance on complying with the Code of Conduct.

17 **Q. HAS APS PROPOSED CHANGES TO ITS POLICIES AND**
18 **PROCEDURES RELATING TO THE CODE OF CONDUCT?**

19 **A.** Not at this time. APS has had Policies and Procedures that provide more detail
20 on the implementation of specific provisions of the Code of Conduct. Because
21 most of the substantive provisions remain unchanged in the Proposed Code of
22 Conduct, I do not believe that many changes to the Policies and Procedures will
23 be required. As I mentioned above, however, the Policies and Procedures would
24 be revised as necessary to make them consistent with the Proposed Code of
25 Conduct. In addition, it is possible that a new Policy and Procedure will be
26 developed for the Competitive Procurement part of the Proposed Code of

1 Conduct. In any event, because the Policies and Procedures depend on the final
2 Code of Conduct approved in this proceeding, any changes to the Policies and
3 Procedures should be made after a Code of Conduct is approved in this
4 proceeding.

5 V. CONCLUSION

6 Q. **DO YOU HAVE ANY CONCLUDING REMARKS?**

7 A. The Proposed Code of Conduct that APS is submitting preserves the underlying
8 principles of the 2000 Code of Conduct, while addressing the issues raised in
9 Track B. To assist in the implementation and enhance our employees'
10 understanding of the Code's requirements, APS has restructured the Code of
11 Conduct and simplified certain provisions while retaining the substantive
12 requirements that address the two fundamental goals of the Code – precluding
13 cross-subsidization and unfair discrimination. APS believes that the Proposed
14 Code of Conduct achieves both of those goals.

15
16 Q. **DOES THAT CONCLUDE YOUR TESTIMONY?**

17 A. Yes.
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**CODE OF CONDUCT
FOR THE
ARIZONA CORPORATION COMMISSION**

APS

July 29, 2005

CODE OF CONDUCT FOR THE ARIZONA CORPORATION COMMISSION

Part One - Definitions

"APS" means Arizona Public Service Company.

"Commission" means the Arizona Corporation Commission.

"Commission Rule" means a final rule of the Commission effective at the time in question.

"Competitive Electric Affiliate" means those affiliates of APS engaged in either Competitive Retail Services or Competitive Wholesale Services.

"Competitive Procurement" means a process by which power is procured by APS.

"Competitive Retail Affiliate" means any affiliate of APS that is engaged in Competitive Retail Services within this state and is an Electric Service Provider.

"Competitive Retail Services" means unbundled generation, unbundled metering, unbundled meter reading, and other retail electric services that have been determined to be competitive services in a Commission Rule.

"Competitive Wholesale Services" means the provision of energy products or services to the wholesale electric market.

"Confidential Customer Information" means any non-public customer-specific information obtained by APS as a result of providing Noncompetitive Services. Confidential Customer Information also includes non-public customer-specific information obtained by APS from customers of special districts and public power entities on behalf of such special districts and public power entities.

"Confidential Information" means Confidential Customer Information and any other nonpublic information regarding Competitive Retail Services or Competitive Wholesale Services obtained solely through the provision of Noncompetitive Services or in a Competitive Procurement process. Confidential Information shall not include information that is otherwise available to non-affiliated third parties or information necessary for a Competitive Electric Affiliate to provide or receive Shared Services.

"Distribution Information" means information about available distribution capability, transmission access, and curtailments.

"Electric Service Provider" means an entity authorized by a Certificate of Convenience and Necessity to provide Competitive Retail Services in Arizona.

"Extraordinary Circumstance" means any situation that requires APS to act in a manner contrary to this Code of Conduct to ensure the reliability of APS' system, or ensure the safety of employees or the public, or to respond to any other emergency where such action is required.

CODE OF CONDUCT FOR THE ARIZONA CORPORATION COMMISSION

"FERC" means the Federal Energy Regulatory Commission.

"Noncompetitive Services" means unbundled distribution service, Standard Offer Service and other services that have been determined to be noncompetitive services in a Commission Rule.

"Pinnacle West" means Pinnacle West Capital Corporation.

"Policies and Procedures" means those policies and procedures developed by APS to implement this Code of Conduct.

"Shared Services" means those support services provided by Pinnacle West or any of its affiliates, including but not limited to: human resources; accounting; tax; insurance; risk and insurance management, claims services, and public safety; energy risk management; audit services; contract management; information and communication technology; communications; environmental, health and safety; regulatory services; system dispatch; transportation; security; facilities; shareholder services; law and business practices; public affairs; and enterprise finance.

"Standard Offer Service" means the bundled provision of retail electric service.

"Third Party" means any Electric Service Provider or market participant other than a Competitive Retail Affiliate that may lawfully provide Competitive Retail Services in Arizona.

CODE OF CONDUCT FOR THE ARIZONA CORPORATION COMMISSION

Part Two - Basic Principles

I. Applicability of Code of Conduct

- A. The Code of Conduct applies to APS as a provider of Noncompetitive Services and its interactions with its Competitive Electric Affiliates, unless an Extraordinary Circumstance excuses compliance.
- B. Regardless of any provision in this Code of Conduct, in an Extraordinary Circumstance APS may take whatever steps are necessary to ensure the reliability of APS' system, to protect the public interest, or to ensure safety for employees and the public. APS shall notify the Commission within 24 hours of or the next business day after an Extraordinary Circumstance and shall post on a public Website a description of the Extraordinary Circumstance and the actions taken by APS.

II. No Discrimination in Service

APS shall not give preferential treatment to its Competitive Electric Affiliates and shall treat affiliated and non-affiliated entities in a nondiscriminatory manner in providing service.

III. Confidential Information

- A. APS shall not provide Confidential Customer Information to any Competitive Electric Affiliate or a Third Party without the customer's prior authorization. Such information may be provided only to the extent specifically authorized.
- B. APS shall not provide Confidential Information to a Competitive Electric Affiliate unless such information is also made available to Third Parties under similar terms and conditions. This restriction shall not apply to Customer Confidential Information provided with the customer's prior authorization.
- C. If Customer Confidential Information is properly requested by a Third Party, APS shall not unreasonably delay or withhold the release of the requested Customer Confidential Information.

IV. Separation Requirements

- A. APS shall be a separate corporate entity from its Competitive Electric Affiliates.
- B. Unless otherwise permitted by the Code of Conduct, APS shall operate separately from its Competitive Electric Affiliates to the extent practical.
- C. APS shall keep separate books and records and shall keep accounting records that set forth appropriate cost allocations between APS and its Competitive Electric Affiliates, which shall be made available to the Commission in accordance with A.A.C. R14-2-804(A).

CODE OF CONDUCT FOR THE ARIZONA CORPORATION COMMISSION

- D. APS and its Competitive Electric Affiliates may share equipment and facilities only in accordance with the functional separation requirements set forth in this Code of Conduct and the Policies and Procedures.
- E. APS and its Competitive Electric Affiliates shall not jointly employ the same employees, except that APS and its Competitive Electric Affiliates may utilize common officers and directors for corporate support, oversight, and governance. APS officers directly responsible for operational matters shall not serve as officers or directors of a Competitive Electric Affiliate. Common officers and directors shall not be utilized to circumvent the prohibition on providing Confidential Information to a Competitive Electric Affiliate, nor shall such common officers or directors be permitted to participate during the development or conduct of any Competitive Procurement process, or in any subsequent negotiations, in which a Competitive Electric Affiliate employing the common officer or director participates as a bidder.
- F. Contracts for services accounted for in conformance with Part 2, Section V of this Code of Conduct shall not constitute prohibited joint employment if measures are taken to prevent the transfer of Confidential Information between APS and any Competitive Electric Affiliate.
- G. APS and its Competitive Electric Affiliates may utilize Shared Services in accordance with Part 2, Section V of this Code of Conduct but Shared Services shall not act as conduit for Confidential Information to Competitive Electric Affiliates.

V. Transfers of Goods and Services

- A. APS shall not subsidize its Competitive Electric Affiliates through any rates or charges for Noncompetitive Services and, except as otherwise provided below, all transactions between APS and its Competitive Electric Affiliates shall be arm's length transactions. An arm's length transaction is a transaction between or among parties, each of whom acts in its own interest and where the final decision on the transaction is not made by a single individual or group of individuals with direct management control or other authority over both parties.
- B. Shared Services may be provided by APS to its Competitive Electric Affiliates, and such services shall be accounted for in accordance with the Policies and Procedures.
- C. APS may acquire Shared Services from Pinnacle West and such services shall be accounted for in accordance with the Policies and Procedures.
- D. Any services provided by APS or its Competitive Electric Affiliates that are subject to a filed tariff shall be provided at the rates and under the terms and conditions set forth in the tariff, unless an exception is permitted by the governing body with jurisdiction over such tariff. APS shall not be required to charge its Competitive Electric Affiliates more than its authorized tariff rate for any Noncompetitive Service.

CODE OF CONDUCT FOR THE ARIZONA CORPORATION COMMISSION

- E. If APS sells to its Competitive Electric Affiliates non-tariffed goods or services, the transfer price shall be the higher of cost or market.
- F. If APS' Competitive Electric Affiliates sell to APS non-tariffed goods or services, the transfer price shall be at a price not to exceed market.

VI. Compliance, Dissemination and Education

- A. Compliance with the Code of Conduct is mandatory.
- B. The failure or refusal of an employee of APS or its affiliates to abide by or to act according to the Code of Conduct or the Policies and Procedures may subject the employee to disciplinary action, up to and including discharge from employment.
- C. Copies of this Code of Conduct shall be provided to employees and agents of APS and its Competitive Electric Affiliates that are likely to be engaged in activities subject to the Code of Conduct.
- D. A copy of the Code of Conduct shall be made available to all employees of APS and its Competitive Electric Affiliates on the corporate Intranet site.
- E. Training on the provisions of the Code of Conduct and its implementation shall be provided to the employees of APS and its Competitive Electric Affiliates and those authorized agents of APS and its Competitive Electric Affiliates that are likely to be engaged in activities subject to the Code of Conduct.
- F. Any activity that would constitute engagement in unlawful anticompetitive behavior shall constitute a violation of this Code of Conduct.
- G. APS shall provide a means for employees to raise questions and report concerns regarding this Code of Conduct.

VII. Modifications to the Code of Conduct or Policies and Procedures

- A. APS may request modifications to the Code of Conduct by filing an application with the Commission. The application shall set forth the proposed modifications and the reasons supporting them.
- B. APS may not make and implement any material change to the Policies and Procedures, including modifications to allocation methods or the direct and indirect allocators used in the Policies and Procedures, without filing an update with the Commission or its designee. Once notification is made by APS of an intended modification, if no action is taken by the Commission or its designee within 30 days of its filing, the modification shall be deemed approved.

CODE OF CONDUCT FOR THE ARIZONA CORPORATION COMMISSION

VIII. Reporting Requirements

APS shall submit the following information to the Commission on an annual basis each April 15th, which shall be treated in accordance with A.R.S. § 40-204:

- A. A list of all Extraordinary Circumstances that explains the nature, cause, and duration of each incident.
- B. A report summarizing the charges associated with all non-tariffed transactions between APS and its Competitive Electric Affiliates, with the associated charges reported separately for each Competitive Electric Affiliate and for each category of service.
- C. A report detailing (i) how many non-Standard Offer Service customers were provided metering services or meter reading services and (ii) how many Electric Service Providers received consolidated billing services from APS.
- D. A report identifying all transfers between APS and its Competitive Electric Affiliates of employees at the manager level or above.

IX. Dispute Resolution

To the extent permitted by law, complaints concerning violations of this Code of Conduct shall be processed under the procedures established in A.A.C. R14-2-212.

Part Three - Retail Electric Competition

I. Non-Discrimination

- A. If a retail tariff provision allows for discretion in its application, APS shall apply that provision in a non-discriminatory manner between its Competitive Retail Affiliates and Third Parties and their respective customers.
- B. APS shall process requests for service by Competitive Retail Affiliates and Third Parties and their respective customers in the same manner and within the same time period.
- C. APS shall offer access to Distribution Information to its Competitive Retail Affiliates and Third Parties concurrently and under the same material terms and conditions.

II. Consolidated Billing and Promotions within the Bill Envelope

- A. If APS includes charges for Competitive Retail Services in its bills for Noncompetitive Services, APS shall offer the same service to any Third Party on the same material terms and conditions.
- B. This provision shall not prevent a Competitive Retail Affiliate or any Third Party from including amounts due for Noncompetitive Services in its own consolidated billing statement if authorized by the customer.
- C. If APS includes with its bills for Noncompetitive Services advertising or promotional materials from its Competitive Retail Affiliate, APS shall offer the same service to any Third Party on the same material terms and conditions.

III. Company Contact Information

Telephone numbers and websites used by APS for the provision of Noncompetitive Services shall be different from those used by its Competitive Retail Affiliates.

IV. Prohibition on Suggestion of Utility Advantage

- A. APS shall not state in any advertising, promotional materials, or sales efforts that a consumer who purchases services from APS' Competitive Retail Affiliates will receive preferential treatment in the provision of Noncompetitive Services or have any other advantage regarding the provision of Noncompetitive Services nor may APS require the purchase of any Competitive Electric Service from APS' Competitive Retail Affiliates as a condition to providing Noncompetitive Services.
- B. The name or logo of APS as a utility distribution company shall not be used in promotional advertising material circulated by a Competitive Retail Affiliate.

CODE OF CONDUCT FOR THE ARIZONA CORPORATION COMMISSION

- C. APS personnel shall not state to any retail customer or potential retail customer a preference for any Competitive Electric Service provided by APS' Competitive Retail Affiliates or any Third Party.
- D. APS shall either direct Customers who inquire about Competitive Retail Services to the Commission for a list of Electric Service Providers or may provide such customers with a copy of the current Commission list of such providers. APS and its employees may not state any recommendation or preference or otherwise attempt to influence a potential customer in their choice of an Electric Service Provider.
- E. APS may not enter into special contracts which provide generation service at a discount to Standard Offer Service customers without the express authorization of the Commission.

V. Joint Marketing

APS and its Competitive Retail Affiliate shall not jointly market their respective retail services.

CODE OF CONDUCT FOR THE ARIZONA CORPORATION COMMISSION

Part Four – Competitive Procurement

I. Applicability

- A. These Competitive Procurement principles shall apply to wholesale acquisition of energy, capacity and physical hedge transactions for APS Standard Offer Service customers.
- B. These Competitive Procurement principles do not apply in cases of emergencies or for short-term acquisitions to maintain system reliability, nor unless otherwise stated to transactions to satisfy APS' obligations under the Commission's Environmental Portfolio Standard and Demand Side Management programs.

II. Acceptable Procurement Methods

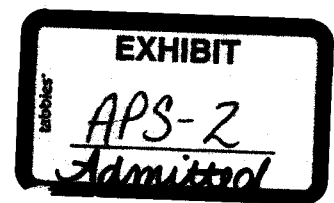
- A. Purchases through third party, on-line trading systems, including but not limited to the Intercontinental Exchange, Bloomberg, California Independent System Operator, New York Mercantile Exchange, or other similar on-line third party systems.
- B. Purchases from qualified, third party, independent energy brokers.
- C. Purchases from non-affiliated entities through auctions or a request for proposals process administered by APS.
- D. Bilateral contracts with non-affiliated entities.
- E. Bilateral contracts with affiliated entities, provided that if APS proposes to procure energy or capacity from an affiliate through a bilateral contract APS will provide, through its Competitive Procurement Website, non-affiliated entities an opportunity to beat any proposed contract before executing the transaction.
- F. Any other Competitive Procurement process approved by the Commission.

III. Participation of Competitive Electric Affiliate

- A. APS shall not give preferential treatment to its Competitive Electric Affiliates in any Competitive Procurement or in the procurement of Demand Side Management or Environmental Portfolio Standard resources.
- B. If a Competitive Electric Affiliate participates as a bidder in a Competitive Procurement request for proposals or auction process, an independent monitor will oversee the process.
- C. If a Competitive Electric Affiliate participates as a bidder in a Competitive Procurement, APS shall keep detailed records of any and all contacts with the Competitive Electric Affiliate, including employees and contractors, regarding the Competitive Procurement for the life of the contract plus five years.

CODE OF CONDUCT FOR THE ARIZONA CORPORATION COMMISSION

- D. If a Competitive Electric Affiliate participates as a bidder in a Competitive Procurement, personnel involved in the preparation of a Competitive Electric Affiliate's bid in the solicitation process shall not have contact with personnel conducting the solicitation or advising APS in the solicitation concerning any business matter related to the Competitive Procurement except as provided below.
- E. The content of any communication between a Competitive Electric Affiliate that is a bidder in a Competitive Procurement and APS personnel (including contractors and agents) conducting the Competitive Procurement must be contemporaneously posted on the Competitive Procurement Website. A Competitive Electric Affiliate may, however, attend bidder's conferences and other public meetings regarding a Competitive Procurement.
- F. Copies of all bilateral power contracts between APS and Competitive Electric Affiliates shall be retained by APS for a minimum of the life of the contract plus five years.



BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

IN THE MATTER OF THE GENERIC
PROCEEDINGS CONCERNING ELECTRIC
RESTRUCTURING ISSUES

DOCKET NO. E-00000A-02-0051

IN THE MATTER OF THE GENERIC
PROCEEDING CONCERNING THE ARIZONA
INDEPENDENT SCHEDULING
ADMINISTRATOR

DOCKET NO. E-00000A-01-0630

NOTICE OF FILING REBUTTAL TESTIMONY

Arizona Public Service Company ("APS") hereby files the Rebuttal Testimony of
Jeffrey B. Guldner.

RESPECTFULLY SUBMITTED this 21st day of October 2005.

PINNACLE WEST CAPITAL
CORPORATION LAW DEPARTMENT

By Karilee Ramaley
Karilee Ramaley
Thomas L. Mumaw

SNELL & WILMER L.L.P.

By Deborah R. Scott
Deborah R. Scott

Attorneys for Arizona Public Service Company

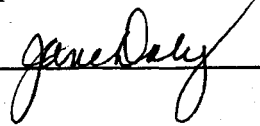
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Original and ~~13~~ copies of the foregoing
filed this 21st day of October 2005, with:

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007

Copies of the foregoing mailed, faxed or
transmitted electronically this 21st
day of October 2005, to:

All parties of record



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**REBUTTAL TESTIMONY
OF
JEFFREY B. GULDNER**

On Behalf of Arizona Public Service Company

Docket No. E-00000A-02-0051

Docket No. E-00000A-01-0630

October 21, 2005

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**REBUTTAL TESTIMONY OF JEFFREY B. GULDNER
ON BEHALF OF ARIZONA PUBLIC SERVICE COMPANY
(Docket No. E-00000A-02-0051)
(Docket No. E-00000A-01-0630)**

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME, ADDRESS AND OCCUPATION.

A. My name is Jeffrey B. Guldner. I am the Director of Regulatory Compliance for Arizona Public Service Company ("APS" or "Company").

Q. DID YOU FILE DIRECT TESTIMONY IN THIS PROCEEDING?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. My rebuttal testimony responds to the testimony filed by Arizona Corporation Commission ("Commission") Staff witness Ms. Barbara Keene. Staff has recommended that the Commission adopt APS' Proposed Code of Conduct with some modifications. In my testimony, I discuss the revisions recommended by Ms. Keene that APS does not oppose incorporating into the Proposed Code of Conduct. These are the majority of Staff's recommended revisions. For the remaining issues, I also address why the Company believes some modification is appropriate to ensure that the Proposed Code of Conduct can be implemented reasonably and effectively.

II. SUMMARY OF REBUTTAL TESTIMONY

Q. PLEASE SUMMARIZE YOUR REBUTTAL TESTIMONY.

A. APS believes that the Company and Staff are in agreement regarding the general structure and provisions of a new Code of Conduct. APS does not oppose most of the changes recommended by Staff to the Proposed Code of Conduct, which was

1 attached to my direct testimony as Schedule JBG-1. There is one change
2 recommended by Staff that APS believes is acceptable with only minor
3 clarification. In addition, it is Staff's position that Pinnacle West Capital
4 Corporation ("PWCC"), the parent corporation of APS, falls within the definition
5 of a "Competitive Electric Affiliate." Although APS believes that it would be
6 appropriate to exclude PWCC from the definition of a Competitive Electric
7 Affiliate, I am proposing certain modifications to the Proposed Code of Conduct
8 should the Commission agree with Staff's position. Finally, I discuss clarifications
9 to Staff's recommended definition of "Operating Employee" that would ensure that
10 this term is not interpreted in a way that would adversely affect the provision of
11 shared services, which are recognized as appropriate in the Proposed Code of
12 Conduct. I have attached a revised, redlined version of the Proposed Code that
13 incorporates these revisions as Schedule JBG-1R. No other party has submitted any
14 testimony or recommended changes to the Proposed Code of Conduct.
15

16 **III. DISCUSSION**

17 **Q. ARE THERE AREAS OF AGREEMENT BETWEEN APS AND STAFF**
18 **RELATING TO THE PROPOSED CODE OF CONDUCT?**

19 **A.** Yes. APS does not oppose most of Staff's recommendations, which can be
20 incorporated in the Proposed Code of Conduct without any further clarification or
21 modification. These consist of:

- 22 • Including the phrase "by the Commission" instead of "in a
23 Commission Rule" in the definitions of "Competitive Retail
24 Services" and "Noncompetitive Retail Services."
25
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- 1 • Allowing a single law department to represent both APS and a
- 2 Competitive Electric Affiliate, while prohibiting a single attorney
- 3 from representing both entities in an arm's length transaction.
- 4
- 5 • Including risk management as a shared service, with the limitations
- 6 that a shared risk management employee cannot be an Operating
- 7 Employee of either APS or its Competitive Electric Affiliates and
- 8 cannot be a conduit for improperly sharing information.
- 9
- 10 • Requiring that Confidential Customer Information be provided to
- 11 others only with the customer's prior *written* authorization, which
- 12 could include a printed version of an electronic authorization.
- 13
- 14 • In those circumstances where a Competitive Electric Affiliate
- 15 participates as a bidder in a Competitive Procurement and an
- 16 independent monitor is required, Staff will select the monitor.
- 17
- 18 • Reports that are required under the Proposed Code of Conduct will be
- 19 made available to the public.

19 **Q. ARE THERE ANY STAFF RECOMMENDATIONS WITH WHICH THE**
20 **COMPANY AGREES, SUBJECT TO MINOR CLARIFICATIONS?**

21 A. Yes, there is one. Staff has recommended that each shared support employee be
22 required to sign an affidavit stating that he or she will not be a conduit for
23 improperly sharing information. APS believes that electronic acknowledgements
24 would meet the requirement of signed affidavits and, therefore, should be
25 authorized by the Proposed Code of Conduct. This would allow the
26 acknowledgement to take place as part of a computer-based training program.

1 Q. STAFF RECOMMENDS THAT PWCC BE CONSIDERED A
2 "COMPETITIVE ELECTRIC AFFILIATE." WHAT IS THE COMPANY'S
3 RESPONSE TO THIS RECOMMENDATION?

4 A. In my direct testimony, I acknowledged that PWCC has some wholesale contracts
5 but noted that those contracts are not marketed to APS for native load
6 requirements. It was the potential marketing to APS of the output of an affiliate-
7 owned power plant that was the original focus for expanding APS' Code of
8 Conduct. For example, the discussion on the Code of Conduct issue in the Track A
9 order noted that the Commission's interest was in "affiliate wholesale purchases
10 used to serve retail customers." Decision No. 65154 (September 10, 2002) at 25. I
11 recommended that the Proposed Code of Conduct not consider PWCC to be a
12 Competitive Electric Affiliate because PWCC is not marketing power to APS
13 customers and the relationship between APS and its parent company is very
14 different from the relationship between APS and a "sister" affiliate, such as APS
15 Energy Services.

16 Specifically, as the parent corporation, PWCC has the responsibility to provide
17 corporate governance to its affiliates. This requires a detailed understanding of
18 information from all affiliates. For example, nonpublic information about APS'
19 load growth forecasts is critical for effective governance by PWCC because that
20 information affects corporate requirements and processes, such as earnings
21 forecasts and capital expenditures.

22 In addition, officers and directors of a publicly traded parent company such as
23 PWCC must have broad access to information to satisfy both their fiduciary
24 obligations and statutory requirements such as the Sarbanes-Oxley Act. An officer
25
26

1 of only APS has no such obligation with respect to the conduct of a "sister"
2 company, such as APS Energy Services.

3
4 Finally, as noted by Staff, APS had concerns about how the transfer pricing
5 requirements of the Code of Conduct would apply to certain transactions between
6 APS and PWCC. One potential example is the payment of dividends by APS to
7 PWCC, which obviously cannot be "priced" at the higher of cost or market like a
8 transfer of a good or service under the Proposed Code of Conduct. I agree with
9 Staff, however, that the Code of Conduct should not affect the payment of
10 dividends by APS.

11 **Q. IF PWCC WERE CONSIDERED A "COMPETITIVE ELECTRIC**
12 **AFFILIATE" AS RECOMMENDED BY STAFF, WOULD ANY CHANGES**
13 **TO THE PROPOSED CODE OF CONDUCT BE NECESSARY?**

14 **A.** Yes, although it is difficult to anticipate every potential transaction or issue that
15 could arise. If the Commission considers PWCC to be a "Competitive Electric
16 Affiliate" under the Proposed Code of Conduct, the following changes, or at least
17 some clarification, are necessary.¹

18 First, it should be clear that the Proposed Code of Conduct does not apply to the
19 payment of dividends by APS to PWCC or to "pass-through" transactions, such as
20 tax payments, that normally occur between a parent corporation and a subsidiary.

21 Second, it would be helpful to clarify the scope of shared services, as the Proposed
22 Code of Conduct was not drafted to reflect PWCC as a Competitive Electric
23

24
25 ¹ The Policies and Procedures that will be developed after this Code of Conduct is approved would also
26 require some changes from the existing Policies and Procedures.

1 Affiliate. Like the original Code of Conduct, the Proposed Code of Conduct
2 identified shared services that may be provided throughout the corporate enterprise,
3 subject to appropriate affiliate accounting. If PWCC is considered a Competitive
4 Electric Affiliate, essentially all of the services that PWCC employees provide
5 should be considered "shared services" under the Proposed Code of Conduct.
6 These include such things as enterprise finance, shareholder services, law and
7 business practices, and corporate audit services. This is particularly important as
8 the Proposed Code of Conduct expressly permits the sharing of information
9 required to either give or receive shared services.

10
11 In addition, I recommend that the term "corporate governance" be included in the
12 definition of shared services to clarify that PWCC employees, officers and
13 directors can provide such governance and that APS may provide information to
14 PWCC employees for corporate governance purposes.

15 Finally, if PWCC is considered a Competitive Electric Affiliate, the Code of
16 Conduct should be clear that physical separation is not required for shared services
17 functions provided by PWCC.

18
19 **Q. DO YOU SUPPORT STAFF'S RECOMMENDATION THAT THE CODE OF**
20 **CONDUCT EXCLUDE "OPERATING EMPLOYEES" FROM PROVIDING**
SHARED SERVICES?

21 **A.** With some clarification as to what constitutes an "operating employee," APS would
22 not oppose Staff's recommendation. Staff correctly notes that the Federal Energy
23 Regulatory Commission's ("FERC") Standards of Conduct rules define a
24 "Transmission Function Employee" as an employee with day-to-day duties of
25 carrying out transmission-related operations. In subsequent Standards of Conduct
26

1 orders, FERC has clarified and discussed how that term applies to employees, such
2 as lawyers and regulatory personnel, who might be considered to "carry out"
3 transmission related operations. In general, FERC recognizes that lawyers and
4 regulatory personnel will advise and make recommendations on transmission-
5 related operations. Provided these personnel are not the operational decision-
6 makers on issues, however, FERC has acknowledged that they can appropriately be
7 shared employees. A similar understanding should apply to any definition of
8 "Operating Employees" to ensure that the use of this term does not eliminate some
9 of the defined shared services in the Proposed Code of Conduct.

10
11 **Q. WHAT CLARIFICATIONS DOES THE COMPANY BELIEVE ARE**
12 **NECESSARY TO THE DEFINITION OF "OPERATING EMPLOYEES"?**

13 A. Two clarifications would better define the scope of the term "Operating
14 Employees." First, the Proposed Code of Conduct is different in scope and intent
15 from the FERC authorities that Ms. Keene cites in her testimony. Some shared
16 services identified in this Proposed Code of Conduct could be construed to involve
17 employees who would have day-to-day responsibility for "planning, directing,
18 organizing or carrying out energy related operations" but who are appropriate
19 shared service employees. For example, information and communications
20 technology personnel are "support" personnel, but nonetheless have responsibilities
21 for information and communications systems related to "energy operations." Such
22 employees should be allowed to provide shared support services provided they do
23 not act as a conduit of information between Competitive Electric Affiliates. The
24 same analysis applies to other support services such as environmental, health and
25 safety, and regulatory services.
26

1 Second, the definition of "Operating Employee" should permit the continuation of
2 the marketing and trading structure that currently exists at APS, which provides
3 marketing and trading services to PWCC and other affiliates. The marketing and
4 trading organization was moved back to APS following the Track A Decision. Due
5 to the limited amount of marketing and trading that now occurs outside of APS, it
6 is not practical to maintain separate trading departments with the associated
7 software and hardware systems and support functions. Nonetheless, the services
8 provided to the non-regulated entities are handled by a separate trading desk, which
9 does not enter into transactions for APS. To accommodate this structure, the
10 definition of "Operating Employee" should be revised to state that an Operating
11 Employee is an employee engaged in "day-to-day duties and responsibilities for
12 planning, directing, organizing, or carrying out energy-related operations for APS."
13 Such a clarification would allow a separate trading desk that would not have
14 responsibility for APS marketing and trading, but could continue to administer any
15 non-APS contracts and positions. The other non-trading functions would be
16 considered shared services.

17
18 **Q. ARE YOU RECOMMENDING A REVISED DEFINITION FOR**
19 **"OPERATING EMPLOYEES"?**

20 **A.** Yes. I believe that the following definition embodies the discussion above while
21 still capturing the intent of Staff.

22 Add the following in Part One, Definitions –

23 **"Operating Employees"** means employees, contractors,
24 consultants, or agents who have day-to-day duties and
25 responsibilities for planning, directing, organizing, or carrying out
26 energy-related operations for APS. Operating employees include,
but are not limited to, generation employees, transmission
employees and distribution employees of APS. Operating

1 employees do not include employees performing support services in
2 the areas specifically identified in the definition of "Shared
3 Services."

4 In Part Two, Section IV (G) add the phrase - "Operating Employees cannot provide
5 Shared Services."

6 **Q. STAFF ALSO RECOMMENDED THAT APS SPECIFICALLY IDENTIFY**
7 **THOSE TRANSACTIONS BETWEEN APS AND A COMPETITIVE**
8 **ELECTRIC AFFILIATE THAT MIGHT NOT BE ARM'S LENGTH**
9 **TRANSACTIONS. WHAT IS YOUR RESPONSE TO THAT**
10 **RECOMMENDATION?**

11 **A.** The transfer pricing requirements between APS and its Competitive Electric
12 Affiliates give rise to many situations where a transaction cannot be made at "arm's
13 length." For example, a transfer between APS and APS Energy Services that is
14 priced at the higher of cost or market would not be "arm's length" if cost exceeded
15 the market price. In addition, a tariffed transaction, such as Standard Offer Service
16 provided to a building used by a Competitive Electric Affiliate or transmission
17 service taken under APS' Open Access Transmission Tariff, is priced at the tariffed
18 rate rather than negotiated at arm's length. Finally, there are transfers between APS
19 and PWCC that relate to corporate and pass-through obligations, such as the annual
20 payments of APS' share of the enterprise's withholding and payroll taxes,
21 employee benefits and pension costs, estimated income taxes, employee savings
22 plan contributions, and APS' allocation of corporate governance costs.

23 Staff requested that APS list transactions that would not be arm's length. As
24 requested by Staff, it is possible to identify generally the following types of
25 transactions where the "arm's length" requirement would not apply:
26

- Transactions where the price is either the higher of or lower of fully allocated cost or fair market value.
- Transactions under a tariff where a price or rate is specified. In the case of Market Based Rate Tariffs where a price is not specified, the price shall be established through an arm's length transaction.
- Corporate transactions such as dividends or payments of an entity's share of taxes, benefits, or other pass-through costs.
- Shared services when accounted for in accordance with the Policies and Procedures. The Policies and Procedures provide for either direct charges of costs that can be assigned to a specific affiliate (such as legal costs) or allocations for costs that cannot be tied to a specific affiliate (such as the costs of preparing consolidated financial statements).

IV. CONCLUSION

Q. DO YOU HAVE ANY CONCLUDING REMARKS?

A. APS does not oppose the majority of the changes recommended by Staff to the Proposed Code of Conduct and has incorporated them into the Revised Proposed Code of Conduct attached to my testimony at Schedule JBG-1R. For the one provision where the Company has proposed a modification to Staff's recommended language, APS believes that the modification is necessary to allow the Company to operate efficiently as well as to comply with other applicable laws and regulations, such as Sarbanes Oxley.

1 Q. DOES THAT CONCLUDE YOUR TESTIMONY?
2 A. Yes.
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**CODE OF CONDUCT
FOR THE
ARIZONA CORPORATION COMMISSION**

October 21, 2005

CODE OF CONDUCT FOR THE ARIZONA CORPORATION COMMISSION

Part One - - Definitions

"APS" means Arizona Public Service Company.

"Arms Length Transaction" means a transaction between or among parties, each of whom acts in its own interest and where the final decision on the transaction is not made by a single individual or group of individuals with direct management control or other authority over both parties.

"Commission" means the Arizona Corporation Commission.

"Commission Rule" means a final rule of the Commission effective at the time in question.

"Competitive Electric Affiliate" means those affiliates of APS engaged in either Competitive Retail Services or Competitive Wholesale Services.

"Competitive Procurement" means a process by which power is procured by APS.

"Competitive Retail Affiliate" means any affiliate of APS that is engaged in Competitive Retail Services within this state and is an Electric Service Provider.

"Competitive Retail Services" means unbundled generation, unbundled metering, unbundled meter reading, and other retail electric services that have been determined to be competitive services by the Commission.

Deleted: in a Commission Rule

"Competitive Wholesale Services" means the provision of energy products or services to the wholesale electric market.

"Confidential Customer Information" means any non-public customer-specific information obtained by APS as a result of providing Noncompetitive Services. Confidential Customer Information also includes non-public customer-specific information obtained by APS from customers of special districts and public power entities on behalf of such special districts and public power entities.

"Confidential Information" means Confidential Customer Information and any other nonpublic information regarding Competitive Retail Services or Competitive Wholesale Services obtained solely through the provision of Noncompetitive Services or in a Competitive Procurement process. Confidential Information shall not include information that is otherwise available to non-affiliated third parties or information necessary for a Competitive Electric Affiliate to provide or receive Shared Services.

"Distribution Information" means information about available distribution capacity, transmission access, and curtailments.

"Electric Service Provider" means an entity authorized by a Certificate of Convenience and Necessity to provide Competitive Retail Services in Arizona.

CODE OF CONDUCT FOR THE ARIZONA CORPORATION COMMISSION

"Extraordinary Circumstance" means any situation that requires APS to act in a manner contrary to this Code of Conduct to ensure the reliability of APS' system, or ensure the safety of employees or the public, or to respond to any other emergency where such action is required.

"FERC" means the Federal Energy Regulatory Commission.

"Noncompetitive Services" means unbundled distribution service, Standard Offer Service and other services that have been determined to be noncompetitive services by the Commission.

Deleted: in a Commission Rule.

"Operating Employees" means employees, contractors, consultants, or agents who have day-to-day duties and responsibilities for planning, directing, organizing, or carrying out energy-related operations for APS. Operating employees include, but are not limited to, generation employees, transmission employees and distribution employees of APS. Operating employees do not include employees performing support services in the areas specifically identified in the definition of Shared Services.

"Pinnacle West" means Pinnacle West Capital Corporation.

"Policies and Procedures" means those policies and procedures developed by APS to implement this Code of Conduct.

"Shared Services" means those support services provided by Pinnacle West or any of its affiliates, including but not limited to; human resources; accounting; corporate governance; tax; insurance; risk and insurance management, claims services, and public safety; energy risk management; audit services; contract management; information and communication technology; communications; environmental, health and safety; regulatory services; system dispatch; transportation; security; facilities; shareholder services; law and business practices; public affairs; and enterprise finance.

"Standard Offer Service" means the bundled provision of retail electric service.

"Third Party" means any Electric Service Provider or market participant other than a Competitive Retail Affiliate that may lawfully provide Competitive Retail Services in Arizona.

CODE OF CONDUCT FOR THE ARIZONA CORPORATION COMMISSION

Part Two -- Basic Principles

I. Applicability of Code of Conduct

- A. The Code of Conduct applies to APS as a provider of Noncompetitive Services and its interactions with its Competitive Electric Affiliates, unless an Extraordinary Circumstance excuses compliance.
- B. Regardless of any provision in this Code of Conduct, in an Extraordinary Circumstance APS may take whatever steps are necessary to ensure the reliability of APS' system, to protect the public interest, or to ensure safety for employees and the public. APS shall notify the Commission within 24 hours of or the next business day after an Extraordinary Circumstance and shall post on a public website a description of the Extraordinary Circumstance and the actions taken by APS.

II. No Discrimination in Service

APS shall not give preferential treatment to its Competitive Electric Affiliates and shall treat affiliated and non-affiliated entities in a nondiscriminatory manner in providing service.

III. Confidential Information

- A. APS shall not provide Confidential Customer Information to any Competitive Electric Affiliate or a Third Party without the customer's prior written authorization, which would include a printed version of an electronic authorization. Such information may be provided only to the extent specifically authorized.
- B. APS shall not provide Confidential Information to a Competitive Electric Affiliate unless such information is also made available to Third Parties under similar terms and conditions. This restriction shall not apply to Customer Confidential Information provided with the customer's prior authorization.
- C. If Customer Confidential Information is properly requested by a Third Party, APS shall not unreasonably delay or withhold the release of the requested Customer Confidential Information.

IV. Separation Requirements

- A. APS shall be a separate corporate entity from its Competitive Electric Affiliates.
- B. Unless otherwise permitted by the Code of Conduct, APS shall operate separately from its Competitive Electric Affiliates to the extent practical.
- C. APS shall keep separate books and records and shall keep accounting records that set forth appropriate cost allocations between APS and its Competitive Electric

CODE OF CONDUCT FOR THE ARIZONA CORPORATION COMMISSION

Affiliates, which shall be made available to the Commission in accordance with A.A.C. R14-3-804(A).

- D. APS and its Competitive Electric Affiliates may share equipment and facilities only in accordance with the functional separation requirements set forth in this Code of Conduct and the Policies and Procedures.
- E. APS and its Competitive Electric Affiliates shall not jointly employ the same employees, except that APS and its Competitive Electric Affiliates may utilize common officers and directors for corporate support, oversight, and governance. APS officers directly responsible for operational matters shall not serve as officers or directors of a Competitive Electric Affiliate. Common officers and directors shall not be utilized to circumvent the prohibition on providing Confidential Information to a Competitive Electric Affiliate, nor shall such common officers or directors be permitted to participate during the development or conduct of any Competitive Procurement process, or in any subsequent negotiations in which a Competitive Electric Affiliate employing the common officer or director participates as a bidder.
- F. Contracts for services accounted for in conformance with Part 2, Section V of this Code of Conduct shall not constitute prohibited joint employment if measures are taken to prevent the transfer of Confidential Information between APS, and any Competitive Electric Affiliate.
- G. APS and its Competitive Electric Affiliates may utilize Shared Services in accordance with Part 2, Section V of this Code of Conduct, but Shared Services shall not act as conduit for Confidential Information to Competitive Electric Affiliates. Each shared service employee shall be required to acknowledge, either in writing or electronically, that he or she will not be a conduit for improperly sharing Confidential Information. Operating Employees cannot provide Shared Services nor shall a shared attorney represent both APS and a Competitive Electric Affiliate in a transaction.

V. Transfers of Goods and Services

- A. APS shall not subsidize its Competitive Electric Affiliates through any rates or charges for Noncompetitive Services and, except as otherwise provided below, all transactions between APS and its Competitive Electric Affiliates shall be Arm's Length Transactions.
- B. Shared Services may be provided by APS to its Competitive Electric Affiliates, and such services shall be accounted for in accordance with the Policies and Procedures.
- C. APS may acquire Shared Services from Pinnacle West and such services shall be accounted for in accordance with the Policies and Procedures.

Deleted: An arms length transaction is a transaction between or among parties, each of whom acts in its own interest and where the final decision on the transaction is not made by a single individual or group of individuals with direct management control or other authority over both parties.

CODE OF CONDUCT FOR THE ARIZONA CORPORATION COMMISSION

- D. Any services provided by APS or its Competitive Electric Affiliates that are subject to a filed tariff shall be provided at the rates and under the terms and conditions set forth in the tariff, unless an exception is permitted by the governing body with jurisdiction over such tariff. APS shall not be required to charge its Competitive Electric Affiliates more than its authorized tariff rate for any Noncompetitive Service.
- E. If APS sells to its Competitive Electric Affiliates non-tariffed goods or services, the transfer price shall be the higher of cost or market.
- F. If APS' Competitive Electric Affiliates sell to APS non-tariffed goods or services, the transfer price shall be at a price not to exceed market.

VI. Compliance, Dissemination and Education

- A. Compliance with the Code of Conduct is mandatory.
- B. The failure or refusal of an employee of APS or its affiliates to abide by or to act according to the Code of Conduct or the Policies and Procedures may subject the employee to disciplinary action, up to and including discharge from employment.
- C. Copies of this Code of Conduct shall be provided to employees and agents of APS and its Competitive Electric Affiliates that are likely to be engaged in activities subject to the Code of Conduct.
- D. A copy of the Code of Conduct shall be made available to all employees of APS and its Competitive Electric Affiliates on the corporate Intranet site.
- E. Training on the provisions of the Code of Conduct and its implementation shall be provided to the employees of APS and its Competitive Electric Affiliates and those authorized agents of APS and its Competitive Electric Affiliates that are likely to be engaged in activities subject to the Code of Conduct.
- F. Any activity that would constitute engagement in unlawful anticompetitive behavior shall constitute a violation of this Code of Conduct.
- G. APS shall provide a means for employees to raise questions and report concerns regarding this Code of Conduct.

VII. Modifications to the Code of Conduct or Policies and Procedures

- A. APS may request modifications to the Code of Conduct by filing an application with the Commission. The application shall set forth the proposed modifications and the reasons supporting them.
- B. APS may not make and implement any material change to the Policies and Procedures, including modifications to allocation methods or the direct and indirect allocators used in the Policies and Procedures, without filing an update

CODE OF CONDUCT FOR THE ARIZONA CORPORATION COMMISSION

with the Commission or its designee. Once notification is made by APS of an intended modification, if no action is taken by the Commission or its designee within 30 days of its filing, the modification shall be deemed approved.

VIII. Reporting Requirements

APS shall submit the following information to the Commission on an annual basis each April 15th, which shall be available to the public:

Deleted: treated in accordance with
A.R.S. § 40-204

- A. A list of all Extraordinary Circumstances that explains the nature, cause and duration of each incident.
- B. A report summarizing the charges associated with all non-tariffed transactions between APS and its Competitive Electric Affiliates, with the associated charges reported separately for each Competitive Electric Affiliate and for each category of service.
- C. A report detailing (i) how many non-Standard Offer Service customers were provided metering services or meter reading services and (ii) how many Electric Service Providers received consolidated billing services from APS.
- D. A report identifying all transfers between APS and its Competitive Electric Affiliates of employees at the manager level or above.

IX. Dispute Resolution

To the extent permitted by law, complaints concerning violations of this Code of Conduct shall be processed under the procedures established in A.A.C. R14-2-212.

CODE OF CONDUCT FOR THE ARIZONA CORPORATION COMMISSION

Part Three - - Retail Electric Competition

I. Non-Discrimination

- A. If a retail tariff provision allows for discretion in its application, APS shall apply that provision in a non-discriminatory manner between its Competitive Retail Affiliates and Third Parties and their respective customers.
- B. APS shall process requests for service by Competitive Retail Affiliates and Third Parties and their respective customers in the same manner and within the same time period.
- C. APS shall offer access to Distribution Information to its Competitive Retail Affiliates and Third Parties concurrently and under the same material terms and conditions.

II. Consolidated Billing and Promotions within the Bill Envelope

- A. If APS includes charges for Competitive Retail Services in its bills for Noncompetitive Services, APS shall offer the same service to any Third Party on the same material terms and conditions.
- B. This provision shall not prevent a Competitive Retail Affiliate or any Third Party from including amounts due for Noncompetitive Services in its own consolidated billing statement if authorized by the customer.
- C. If APS includes with its bills for Noncompetitive Services advertising or promotional materials from its Competitive Retail Affiliate, APS shall offer the same service to any Third Party on the same material terms and conditions.

III. Company Contact Information

Telephone numbers and websites used by APS for the provision of Noncompetitive Services shall be different from those used by its Competitive Retail Affiliates.

IV. Prohibition on Suggestion of Utility Advantage

- A. APS shall not state in any advertising, promotional materials, or sales efforts that a consumer who purchases services from APS' Competitive Retail Affiliates will receive preferential treatment in the provision of Noncompetitive Services or have any other advantage regarding the provision of Noncompetitive Services nor may APS require the purchase of any Competitive Electric Service from APS' Competitive Retail Affiliates as a condition to providing Noncompetitive Services.
- B. The name or logo of APS as a utility distribution company shall not be used in promotional advertising material circulated by a Competitive Retail Affiliate.

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- C. APS personnel shall not state to any retail customer or potential retail customer a preference for any Competitive Electric Service provided by APS' Competitive Retail Affiliates or any Third Party.
- D. APS shall either direct Customers who inquire about Competitive Retail Services to the Commission for a list of Electric Service Providers or may provide such customers with a copy of the current Commission list of such providers. APS and its employees may not state any recommendation or preference or otherwise attempt to influence a potential customer in their choice of an Electric Service Provider.
- E. APS may not enter into special contracts which provide generation service at a discount to Standard Offer Service customers without the express authorization of the Commission.

V. Joint Marketing

APS and its Competitive Retail Affiliate shall not jointly market their respective retail services.

CODE OF CONDUCT FOR THE ARIZONA CORPORATION COMMISSION

Part Four - Competitive Procurement

I. Applicability

- A. These Competitive Procurement principles shall apply to wholesale acquisition of energy, capacity and physical hedge transactions for APS Standard Offer Service customers.
- B. These Competitive Procurement principles do not apply in cases of emergencies or for short-term acquisitions to maintain system reliability, nor unless otherwise stated, to transactions to satisfy APS' obligations under the Commission's Environmental Portfolio Standard and Demand Side Management programs.

II. Acceptable Procurement Methods

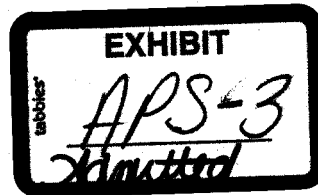
- A. Purchases through third party, on-line trading systems, including but not limited to the Intercontinental Exchange, Bloomberg, California Independent System Operator, New York Mercantile Exchange or other similar on-line third party systems.
- B. Purchases from qualified, third party, independent energy brokers.
- C. Purchases from non-affiliated entities through auctions or a request for proposals process administered by APS.
- D. Bilateral contracts with non-affiliated entities.
- E. Bilateral contracts with affiliated entities, provided that if APS proposes to procure energy or capacity from an affiliate through a bilateral contract APS will provide, through its Competitive Procurement Website, non-affiliated entities an opportunity to beat any proposed contract before executing the transaction.
- F. Any other Competitive Procurement process approved by the Commission.

III. Participation of Competitive Electric Affiliate

- A. APS shall not give preferential treatment to its Competitive Electric Affiliates in any Competitive Procurement or in the procurement of Demand Side Management or Environmental Portfolio Standard resources.
- B. If a Competitive Electric Affiliate participates as a bidder in a Competitive Procurement request for proposals or auction process, an independent monitor selected by Staff will oversee the process.
- C. If a Competitive Electric Affiliate participates as a bidder in a Competitive Procurement, APS shall keep detailed records of any and all contacts with the Competitive Electric Affiliate, including employees and contractors, regarding the Competitive Procurement for the life of the contract plus five years.

CODE OF CONDUCT FOR THE ARIZONA CORPORATION COMMISSION

- D. If a Competitive Electric Affiliate participates as a bidder in a Competitive Procurement, personnel involved in the preparation of a Competitive Electric Affiliate's bid in the solicitation process shall not have contact with personnel conducting the solicitation or advising APS in the solicitation concerning any business matter related to the Competitive Procurement except as provided below.
- E. The content of any communication between a Competitive Electric Affiliate that is a bidder in a Competitive Procurement and APS personnel (including contractors and agents) conducting the Competitive Procurement must be contemporaneously posted on the Competitive Procurement Website. A Competitive Electric Affiliate may, however, attend bidders' conferences and other public meetings regarding a Competitive Procurement.
- F. Copies of all bilateral power contracts between APS and Competitive Electric Affiliates shall be retained by APS for a minimum of the life of the contract plus five years.



BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER, Chairman
MARC SPITZER
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES

IN THE MATTER OF THE GENERIC
PROCEEDING CONCERNING ELECTRIC
RESTRUCTURING ISSUES.

DOCKET NO. E-00000A-02-0051

IN THE MATTER OF THE GENERIC
PROCEEDING CONCERNING THE
ARIZONA INDEPENDENT SCHEDULING
ADMINISTRATOR.

DOCKET NO. E-00000A-01-0630

NOTICE OF FILING

Arizona Public Service Company ("APS") hereby files certain information requested by the Administrative Law Judge at the Procedural Conference on November 9, 2005.

RESPECTFULLY SUBMITTED this 10th day of November, 2005.

PINNACLE WEST CAPITAL
CORPORATION LAW DEPARTMENT

By: Karilee S. Ramaley
Karilee S. Ramaley
Thomas L. Mumaw

1 The original and 10 copies of the
2 foregoing were filed this 10th day
3 of November, 2005 with:

4 Docket Control
5 Arizona Corporation Commission
6 1200 West Washington
Phoenix, AZ 85007.

7 Copies of the foregoing mailed, faxed or
8 transmitted electronically this
9 10th day of November, 2005 to:

10 All parties of record.
11 _____
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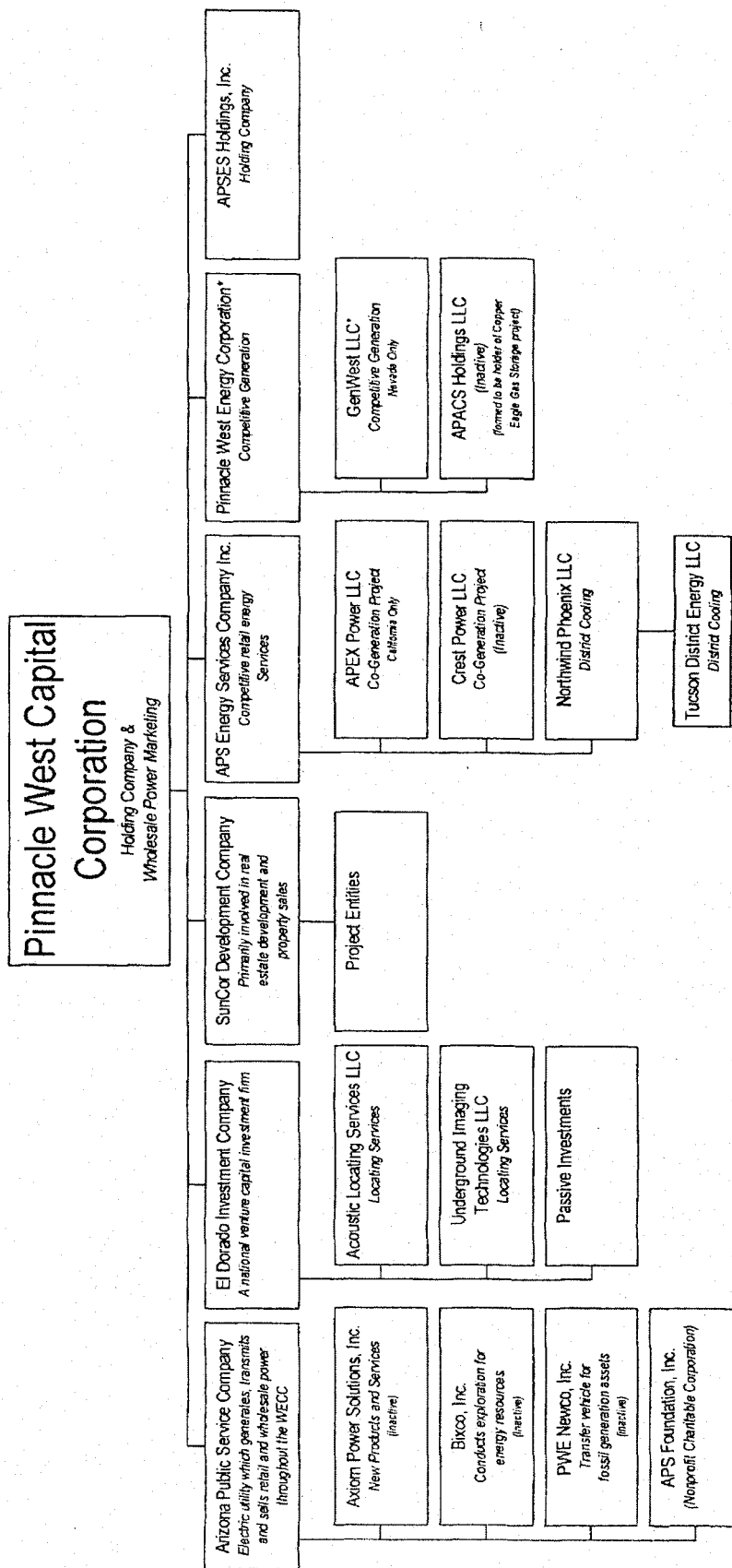
Arizona Public Service Company's Response to
Arizona Corporation Commission Administrative Law Judge
Request for Information Dated 11/09/05
Docket Nos. E-00000A-02-0051 & E-00000A-01-0630

1. **Provide a chart showing APS' affiliates and their relationship to APS.**

APS Response:

See the attached chart, "Corporate Structure and Functions."

CORPORATE STRUCTURE & FUNCTIONS



* Only generating asset is a 75% interest in Silverhawk, which it has sold to Nevada Power Company (NPC). Although sale has not closed, NPC has assumed operational control of Silverhawk.

Arizona Public Service Company's Response to
Arizona Corporation Commission Administrative Law Judge
Request for Information Dated 11/09/05
Docket Nos. E-00000A-02-0051 & E-00000A-01-0630

2. Provide the names and functions of existing and planned affiliates.

APS Response:

See the chart provided in response to Question 1. Neither APS nor its affiliates have any plans to form new affiliates at the present time.

Arizona Public Service Company's Response to
Arizona Corporation Commission Administrative Law Judge
Request for Information Dated 11/09/05
Docket Nos. E-00000A-02-0051 & E-00000A-01-0630

- 3. List which affiliates provide shared services and to which affiliates such shared services are provided.**

APS Response:

See the attached list of Shared Services

LIST OF SHARED SERVICES

APS to Affiliates

- Accounting
- Tax
- Insurance
- Risk & Insurance Mgmt, Claims Svcs, & Public Safety
- Regulatory Services
- Information Services
- Human Resources Services
- Energy Risk Management (APSES and PWCC only)
- System Dispatch and Scheduling (APSES and PWCC only)
- Environmental Health & Safety
- Corporate Communications
- Community Development
- Corporate Security
- Real Estate/Facility Management
- Contract Management
- Transportation

PWCC to Affiliates

- Audit Services
- Law and Business Practices
- Public Affairs
- Treasury
- Enterprise Finance
- Shareholder Services

Arizona Public Service Company's Response to
Arizona Corporation Commission Administrative Law Judge
Request for Information Dated 11/09/05
Docket Nos. E-00000A-02-0051 & E-00000A-01-0630

4. List the officers and directors for APS and each of its affiliates.

APS Response:

See the attached listings of officers and directors.



Pinnacle West Capital Corporation

DIRECTORS

Edward N. Basha, Jr.
Jack E. Davis
Michael L. Gallagher
Pamela Grant
Roy A. Herberger, Jr.
Martha O. Hesse

William S. Jamieson, Jr.
Humberto S. Lopez
Kathryn L. Munro
Bruce J. Nordstrom
William J. Post
William L. Stewart

OFFICERS

Robert S. Aiken	Vice President, Federal Affairs
Donald E. Brandt	Executive Vice President & Chief Financial Officer
Jack E. Davis	President & Chief Operating Officer
Barbara M. Gomez	Vice President & Treasurer
Nancy C. Loftin	Vice President, General Counsel & Secretary
William J. Post	Chairman & Chief Executive Officer
Martin L. Shultz	Vice President, Government Affairs



THE POWER TO MAKE IT HAPPENSM

DIRECTORS

Edward N. Basha, Jr.	William S. Jamieson, Jr.
Jack E. Davis	Humberto S. Lopez
Michael L. Gallagher	Kathryn L. Munro
Pamela Grant	Bruce J. Nordstrom
Roy A. Herberger, Jr.	William J. Post
Martha O. Hesse	William L. Stewart

OFFICERS

Jan H. Bennett	Vice President, Customer Service
Ajit P. Bhatti	Vice President, Resource Planning
Donald E. Brandt	Executive Vice President & Chief Financial Officer
Dennis L. Brown	Vice President & Chief Information Officer
Jack E. Davis	President & Chief Executive Officer
John R. Denman	Vice President, Fossil Generation
Clifford Eubanks	Vice President, Nuclear Operations
Armando B. Flores	Executive Vice President, Corporate Business Services
Edward Z. Fox	Vice President, Communications, Environment & Safety
Chris N. Froggatt	Vice President & Controller
Barbara M. Gomez	Vice President & Treasurer
David A. Hansen	Vice President, Power Marketing & Trading
Warren C. Kotzmann	Vice President, Resource Acquisition & Risk Management
James M. Levine	Executive Vice President, Generation
Nancy C. Loftin	Vice President, General Counsel & Secretary
C. David Mauldin	Vice President, Nuclear Engineering & Support
William J. Post	Chairman of the Board
Donald G. Robinson	Vice President, Planning
Steven M. Wheeler	Executive Vice President, Customer Service & Regulation

AXIOM POWER SOLUTIONS, INC.

DIRECTORS

Jack E. Davis
William J. Post

OFFICERS

William J. Post	President & CEO
Nancy C. Loftin	Secretary & Treasurer

BIXCO, INC.

DIRECTORS

Jack E. Davis
William J. Post

OFFICERS

William J. Post	President
Jack E. Davis	Vice President
Nancy C. Loftin	Secretary & Treasurer

PWENEWCO, INC.

DIRECTORS

James M. Levine

OFFICERS

James M. Levine	President
Donald E. Brandt	Vice President
Nancy C. Loftin	Secretary and Treasurer

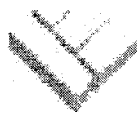
APS FOUNDATION, INC.

DIRECTORS

Jack E. Davis
Armando B. Flores
Nancy C. Loftin
James M. Levine
William J. Post

OFFICERS

Jack E. Davis	Vice President
Armando B. Flores	Vice President
James M. Levine	Vice President
Nancy C. Loftin	Secretary & Treasurer
William J. Post	President



**EL DORADO
INVESTMENT COMPANY**

El Dorado Investment Company

DIRECTORS

Michael L. Gallagher
Roy A. Herberger, Jr.
William J. Post

OFFICERS

William J. Post	Chairman of the Board, President & Chief Executive Officer
Nancy C. Loftin	Secretary & Assistant Treasurer
Donald E. Brandt	Treasurer & Assistant Secretary

Acoustic Locating Services, LLC

Board of Managers

John Finn
Steve Summerville

Underground Imaging Technologies, LLC

Board of Managers

John Finn
Steve Summerville
Doug Hunt
Kevin Alft



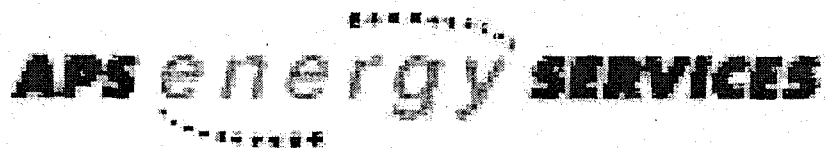
SunCor Development Company

DIRECTORS

Steven A. Betts
Michael L. Gallagher
Pamela Grant
Humberto S. Lopez
William J. Post

OFFICERS

Steven A. Betts	President & Chief Executive Officer
Duane S. Black	Executive Vice President & Chief Operating Officer
Donald E. Brandt	Treasurer & Assistant Secretary
Jay T. Ellingson	Vice President Development-Palm Valley
Steven Gervais	Vice President
Margaret E. Kirch	Vice President Commercial Development
Nancy C. Loftin	Secretary & Assistant Treasurer
Thomas A. Patrick	Vice President Golf Operations
William J. Post	Chairman of the Board



APS Energy Services Company, Inc.

DIRECTORS

Donald E. Brandt
Warren C. Kotzmann
William J. Post
Vicki G. Sandler
William L. Stewart

OFFICERS

Barbara M. Gomez
Nancy C. Loftin
William J. Post
Vicki G. Sandler

Treasurer
Secretary
Chairman of the Board
President

APEX Power, LLC

DIRECTORS

Robert Radomski
James Lodge
Darrel Stockwell
Johnathon Bruser
David Getts

OFFICERS

Vicki Sandler	Member
James B. Rutland	Member

CREST Power, LLC

Newly formed - no current officers

Northwind Phoenix, LLC

Board of Managers

Vicki Sandler
Donald Brandt

OFFICERS

Jim Lodge

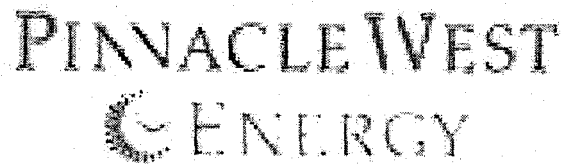
Vice President & General Manager

Tucson District Energy, LLC

OFFICERS

Jim Lodge Vice President & General Manager

11/10/05



Pinnacle West Energy Corporation

DIRECTORS

Edward N. Basha, Jr.
Michael L. Gallagher
Pamela Grant
Roy A. Herberger, Jr.
Martha O. Hesse
William S. Jamieson, Jr.

Humberto S. Lopez
Kathryn L. Munro
Bruce J. Nordstrom
William J. Post
William L. Stewart

OFFICERS

Donald E. Brandt	Chief Financial Officer
Barbara M. Gomez	Treasurer
Warren C. Kotzmann	Vice President, Business & Corporate Services
James M. Levine	President & Chief Executive Officer
Nancy C. Loftin	Secretary
William J. Post	Chairman of the Board

GenWest, LLC

OFFICERS

James M. Levine	President
Warren C. Kotzmann	Vice President
Nancy C. Loftin	Secretary
Barbara M. Gomez	Treasurer

APACS Holdings, LLC

No officers or directors

APSES Holdings, Inc.

a Delaware corporation

DIRECTORS

Warren C. Kotzmann

William J. Post

OFFICERS

Barbara M. Gomez

Nancy C. Loftin

William J. Post

Vicki G. Sandler

Treasurer

Secretary

Chairman of the Board

President

Arizona Public Service Company's Response to
Arizona Corporation Commission Administrative Law Judge
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Docket Nos. E-00000A-02-0051 & E-00000A-01-0630

5. **Provide any other information showing the relationship between APS and its affiliates.**

APS Response:

Other than as indicated by the organizational chart provided in response to Question 1, the only "relationship" between APS and its affiliates is whatever business they transact with each other. Pursuant to Commission Rule 805, APS files an annual Affiliate Interest Report. Exhibit 6 to that report lists the transactions between APS and its affiliates during 2004. (Attached is a copy of Exhibit 6 to the 2004 APS Affiliate Interest Report.) Please note that Nuclear Assurance Corp. has since been sold and is no longer an affiliate.

X. In accordance with R14-2-805 A.8, provide the dollar amount transferred between the utility and each affiliate during the annual period, and the purpose of each transfer.

1. Name of affiliate: APS Energy Services

2. Amount and purpose of each transfer from utility to affiliate:

There were no transactions from the utility to APS Energy Services during 2004

3. Amount and purpose of each transfer from affiliate to utility.

Column 1	Column 2	Column 3	Column 4	Column 5
Year 2004	Amount FN	Purpose	Transfer From	Transfer To
	\$150,408,821	Purchase power for APSES' California customers	142	131
	\$7,933,618	Energy usage by APSES energy management customers for which APSES is acting as billing agent	146	131
	\$1,234,137	Shared services	146	131
	\$269,980	Scheduling Fees	146	131
	\$210,430	Other	146	131
	\$208,332	Rent, utilities, and insurance	142, 146	131
	\$173,460	Energy risk management	146	131
	\$112,378	Contract Labor	146	131

4. Definitions of accounts from sections 2 and 3:

131 = Cash

142 = Customer accounts receivable

146 = Accounts receivable from associated companies

X. In accordance with R14-2-805 A.8, provide the dollar amount transferred between the utility and each affiliate during the annual period, and the purpose of each transfer.

1. Name of affiliate: APS Foundation

2. Amount and purpose of each transfer from utility to affiliate:

There were no transactions from the utility to APS Foundation during 2004

3. Amount and purpose of each transfer from affiliate to utility.

There were no transactions from APS Foundation to the utility during 2004

X. In accordance with R14-2-805 A.8, provide the dollar amount transferred between the utility and each affiliate during the annual period, and the purpose of each transfer.

1. Name of affiliate: Nuclear Assurance Corporation, International

2. Amount and purpose of each transfer from utility to affiliate:

Column 1	Column 2	Column 3	Column 4	Column 5
Year 2004	Amount FN	Purpose	Transfer From	Transfer To
	\$ 9,435,460 (a)	Payments for dry cask storage project	131	518

(a) Amount shown is for entire Palo Verde Project for which APS is the operating agent. APS share of payments was \$2,736,283. The remainder was paid by the other Palo Verde Participants. Amount shown reflects activity through November 17, 2004 the sale date of NAC.

3. Amount and purpose of each transfer from affiliate to utility.

There were no transactions from Nuclear Assurance Corporation, International to APS during 2004

4. Definition of accounts from sections 2 and 3:

131 = Cash

518 = Nuclear fuel expense

X. In accordance with R14-2-805 A.8, provide the dollar amount transferred between the utility and each affiliate during the annual period, and the purpose of each transfer.

1. Name of affiliate: Pinnacle West Capital Corporation
2. Amount and purpose of each transfer from utility to affiliate:

Column 1	Column 2	Column 3	Column 4	Column 5
Year 2004	Amount FN	Purpose	Transfer From	Transfer To
	\$170,000,000	Common stock dividends	131	438
	\$144,275,972	APS share of withholding and payroll taxes	131	234
	\$75,331,101	APS share of employee benefits (excluding pension and other postretirement benefits)	131	234
	\$69,904,800	APS Share of estimated income taxes	131	236
	\$59,054,063	APS share of pension and other post retirement benefits contributions	131	234, 253
	\$34,192,590	APS share of savings plan payroll deductions	131	234
	\$13,497,751	Intercompany purchases and sales of Power and Natural gas	131	234
	\$5,609,592	APS share of corporate governance allocation	131	234
	\$2,896,128	APS share of shared services	131	234
	\$46,367	Other	131	186

3. Amount and purpose of each transfer from affiliate to utility.

Column 1	Column 2	Column 3	Column 4	Column 5
Year 2004	Amount FN	Purpose	Transfer From	Transfer To
	\$13,306,308	Transmission service	146	131
	\$121,529	Shared services	146	131

4. Definition of accounts from sections 2 and 3:

131 = Cash
 146 = Accounts receivable from associated companies
 186 = Deferred Debit
 234 = Accounts payable to associated companies
 236 = Taxes Accrued
 253 = Deferred Credits
 438 = Dividend Declared

X. In accordance with R14-2-805 A.8, provide the dollar amount transferred between the utility and each affiliate during the annual period, and the purpose of each transfer.

1. Name of affiliate: Pinnacle West Energy

2. Amount and purpose of each transfer from utility to affiliate:

Column 1	Column 2	Column 3	Column 4	Column 5
Year 2004	Amount FN	Purpose	Transfer From	Transfer To
	\$73,089,519	Intercompany purchase of power, including amounts for trading purposes	131	234
	\$8,130,406	Partial refund of collateral on Track "B" Contract	131	234

3. Amount and purpose of each transfer from affiliate to utility.

Column 1	Column 2	Column 3	Column 4	Column 5
Year 2004	Amount FN	Purpose	Transfer From	Transfer To
	\$31,950,000	Interest on \$500M loan with APS	237	131
	\$8,917,208	Shared services	146	131
	\$1,795,843	Energy services	142	131
	\$1,371,275 (a)	Redhawk water treatment, usage, and reserve fees	146	131

(a) Amount shown is for entire Palo Verde Project for which APS is the operating agent. APS share of payments was \$397,670.

4. Definition of accounts from sections 2 and 3:

- 131 = Cash
- 142 = Customer accounts receivable
- 146 = Accounts receivable from associated companies
- 234 = Accounts payable to associated companies
- 237 = Interest Accrued

X. In accordance with R14-2-805 A.8, provide the dollar amount transferred between the utility and each affiliate during the annual period, and the purpose of each transfer.

1. Name of affiliate: SunCor Development

2. Amount and purpose of each transfer from utility to affiliate:
There were no transfers from the utility to Suncor.

3. Amount and purpose of each transfer from affiliate to utility.

Column 1	Column 2	Column 3	Column 4	Column 5
Year 2004	Amount FN	Purpose	Transfer From	Transfer To
	\$1,100,375	Fees for tariffed utility services	142	131

4. Definition of accounts from sections 2 and 3:
131= Cash
142= Customer Accounts Receivable

Arizona Public Service Company's Response to
Arizona Corporation Commission Administrative Law Judge
Request for Information Dated 11/09/05
Docket Nos. E-00000A-02-0051 & E-00000A-01-0630

6. List any waivers of affiliate interest rules for APS and its Affiliates

APS Response:

Although not technically a "waiver," in Decision No. 58063 (Nov. 3, 1992), the Commission partially lifted a stay of the affiliate interest rules first granted in Decision No. 56890. As a result, the affiliate rules are applicable only in the circumstances set forth in Decision No. 58063 (copy attached).

In Decision No. 61973 the Commission granted partial waivers of the affiliate rules to APS and Pinnacle West (see Exhibit D to Decision No. 61973)(Oct. 6, 1999) (copy attached).

In Decision No. 65434 (Dec. 3, 2002), APS received a one-time transaction specific waiver of Rule 804(B)(1) and (2) to lend money to or guarantee specific obligations of Pinnacle West Capital.

RATES & REGULATION

NOV 06 1992

RECEIVED

BEFORE THE ARIZONA CORPORATION COMMISSION NOV 06 1992

Arizona Corporation Commission
DOCKETED & WILMER

NOV 03 1992

RENZ D. JENNINGS
Chairman
MARCIA WEEKS
Commissioner
DALE H. MORGAN
Commissioner

DOCKETED BY *JW*

IN THE MATTER OF THE NOTICE OF
PROPOSED ADOPTION OF RULES TO
PROVIDE FOR REGULATION OF PUBLIC
UTILITY COMPANIES WITH UNREGULATED
AFFILIATES.

DOCKET NO. R-0000-89-194

ORDER

DECISION NO. 58063

Open Meeting
October 28, 1992
Phoenix, Arizona

FINDINGS OF FACT

1. On March 14, 1990, the Commission issued Decision No. 56844, which adopted rules to oversee the affiliated interests of public service corporations, A.A.C. R14-2-801 through -806 ("the rules"). A copy of the rules is attached as Attachment A. In that Decision, the Commission stated that the rules would become effective upon certification by the Attorney General's office or upon the expiration of ninety (90) days after submission of the rules to the Attorney General's office.

2. On April 3, 1990, Applications for Rehearing of Decision No. 56844 were filed by several participants to that proceeding. In addition, the Attorney General filed an Application for Rehearing and Request for Stay of Decision No. 56844.

3. On April 26, 1990, the Commission issued Decision No. 56890, granting a stay of Decision No. 56844, because the Commission anticipated litigation over the rules.

. . .

1 4. On May 4, 1990, the Attorney General brought suit against
2 the Commission in Superior Court in order to dispute the
3 Commission's contention that Attorney General certification of
4 Commission ratemaking rules was unconstitutional. Several
5 interested utilities intervened.

6 5. On September 25, 1990, the Superior Court determined that
7 Attorney General certification of Commission ratemaking rules is
8 constitutional.

9 6. On November 8, 1990, the Commission filed a Notice of
10 Appeal with the Court of Appeals, contesting the Superior Court's
11 judgment.

12 7. While that appeal was pending, the Commission forwarded
13 the rules to the Attorney General's office for certification.

14 8. On January 22, 1991, the Attorney General informed the
15 Commission that he would not certify the rules.

16 9. On February 26, 1991, the Commission brought a special
17 action in the Arizona Supreme Court, asking the Court to order the
18 Attorney General to certify the rules.

19 10. On June 23, 1992, the Supreme Court issued a mandate
20 directing the Attorney General to certify the rules.

21 11. On July 30, 1992, the Attorney General certified the
22 rules.

23 12. Since then, the Staff has held meetings with all affected
24 Arizona public service corporations to ascertain their concerns and
25 questions regarding the rules and to provide feedback.

26 13. Now that the rules have been certified, the rationale
27 supporting the stay ordered in Decision No. 56890 no longer
28 applies.

1 14. The stay ordered in Decision No. 56890 should be lifted,
2 except as provided below, in stepped phases to allow both the
3 affected public service corporations and the Commission sufficient
4 notice and time to prepare for the implementation of the rules.
5 Gradual lifting of the stay will also provide the Commission
6 additional experience under the most critical components of the
7 rules prior to full implementation.

8 15. The stay ordered in Decision No. 56890 should be lifted
9 for A.A.C. R14-2-801, -802, -805 and -806.

10 16. The stay ordered in Decision No. 56890 should be lifted
11 for A.A.C. R14-2-803, except that for those situations which
12 require prior notification pursuant to A.A.C. R14-2-803.A, the stay
13 should be lifted only for those situations where (1) a public
14 utility holding company is organized; (2) a public utility holding
15 company acquires an initial financial interest in an affiliate or
16 utility; (3) a public utility holding company is reorganized in
17 such a way as to cause changes in the structure of the business
18 organization; (4) the tax structure of a public utility holding
19 company is changed; (5) the lines of authority or relationships
20 between affiliates and a utility are changed; or (6) a public
21 utility holding company either increases or decreases its financial
22 interest in an affiliate or utility in an amount in excess of the
23 following "exempt amounts", which vary depending on the public
24 utility holding company's and any affiliate's pre-existing utility
25 assets in all jurisdictions including Arizona:

26 . . .

27 . . .

28 . . .

	<u>TOTAL UTILITY ASSETS</u>	<u>EXEMPT AMOUNT</u>
1		
2	A. \$0 - \$1 Billion	\$5 Million
3		
4	B. Over \$1 Billion to \$3 Billion	\$25 Million
5	C. Over \$3 Billion to \$6 Billion	\$50 Million
6		
7	D. Over \$6 Billion to \$10 Billion	\$100 Million
8	E. Over \$10 Billion	\$150 Million

9 The "exempt amounts" are to be measured on a cumulative basis over
 10 the calendar year in which the transactions will be made.

11 17. The stay ordered in Decision No. 56890 should be lifted
 12 for A.A.C. R14-2-804, with the following exceptions:

13 a. for those transactions which require prior approval
 14 by the Commission pursuant to A.A.C. R14-2-804.B.1., the stay
 15 should be lifted only for transactions whereby a utility (1)
 16 obtains its initial financial interest in an affiliate not
 17 regulated by the Commission; (2) guarantees or assumes the
 18 liabilities of such affiliate; or (3) either increases or
 19 decreases its financial interest in such an affiliate in an
 20 amount in excess of the following "exempt amounts", which vary
 21 depending on the utility's pre-existing utility assets in all
 22 jurisdictions including Arizona:

23 . . .
 24 . . .
 25 . . .
 26 . . .
 27 . . .
 28 . . .

<u>TOTAL UTILITY ASSETS</u>	<u>EXEMPT AMOUNT</u>
A. \$0 - \$1 Billion	\$5 Million
B. Over \$1 Billion to \$3 Billion	\$25 Million
C. Over \$3 Billion to \$6 Billion	\$50 Million
D. Over \$6 Billion to \$10 Billion	\$100 Million
E. Over \$10 Billion	\$150 Million

The "exempt amounts" are to be measured on a cumulative basis over the calendar year in which the transactions will be made.

b. for those transactions which require prior approval by the Commission pursuant to A.A.C. R14-2-804.B.2., the stay should be lifted only for transactions between a utility and any affiliate not regulated by the Commission for which any bonds, notes or other evidences of indebtedness are issued by the affiliate to the utility.

18. For any public service corporation that has or will have applied for a waiver under A.A.C. R14-2-806 prior to the effective date that the stay ordered in Decision No. 56890 is lifted as to that public service corporation, the thirty days provided for in A.A.C. R14-2-806.C. should begin to run upon the effective date that the stay ordered in Decision No. 56890 is lifted as to that public service corporation.

19. Except as provided herein, the stay ordered in Decision No. 56890 should be lifted, and the rules adopted by Decision No. 56844 become effective, in the following sequence:

. . .

. . .

	<u>Public Service Corporation</u>	<u>Effective Date</u>
1		
2	Arizona Public Service Company	December 1, 1992
3	Southwest Gas Corporation	December 1, 1992
4	Tucson Electric Power Company	December 1, 1992
5	U S WEST Communications, Inc.	December 1, 1992
6	Arizona Water Company	January 15, 1993
7	Citizens Utilities Company	January 15, 1993
8	Citizens Utilities Rural Company, Inc.	January 15, 1993
9	Sun City Water Company	January 15, 1993
10	All other Class A public service	
11	corporations as defined in A.A.C.	
	R14-2-103	March 1, 1993

CONCLUSIONS OF LAW

13 The Commission has jurisdiction over this matter and has
14 the authority to issue this order.

ORDER

16 THEREFORE IT IS ORDERED that the stay ordered in Decision No.
17 56890 shall be lifted for A.A.C. R14-2-801, -802, -805 and -806.

18 IT IS FURTHER ORDERED that the stay ordered in Decision No.
19 56890 shall be lifted for A.A.C. R14-2-803, except that for those
20 situations which require prior notification pursuant to A.A.C. R14-
21 2-803.A., the stay shall be lifted only for those situations where
22 (1) a public utility holding company is organized; (2) a public
23 utility holding company acquires an initial financial interest in
24 an affiliate or utility; (3) a public utility holding company is
25 reorganized in such a way as to cause changes in the structure of
26 the business organization; (4) the tax structure of a public
27 utility holding company is changed; (5) the lines of authority or
28 relationships between affiliates and a utility are changed; or (6)

a public utility holding company either increases or decreases its financial interest in an affiliate or utility in an amount in excess of the following "exempt amounts", which vary depending on the public utility holding company's and any affiliate's pre-existing utility assets in all jurisdictions including Arizona:

<u>TOTAL UTILITY ASSETS</u>	<u>EXEMPT AMOUNT</u>
A. \$0 - \$1 Billion	\$5 Million
B. Over \$1 Billion to \$3 Billion	\$25 Million
C. Over \$3 Billion to \$6 Billion	\$50 Million
D. Over \$6 Billion to \$10 Billion	\$100 Million
E. Over \$10 Billion	\$150 Million

The "exempt amounts" are to be measured on a cumulative basis over the calendar year in which the transactions will be made.

IT IS FURTHER ORDERED that the stay ordered in Decision No. 56890 shall be lifted for A.A.C. R14-2-804, with the following exceptions:

a. for those transactions which require prior approval by the Commission pursuant to A.A.C. R14-2-804.B.1., the stay shall be lifted only for transactions whereby a utility (1) obtains its initial financial interest in an affiliate not regulated by the Commission; (2) guarantees or assumes the liabilities of such affiliate; or (3) either increases or decreases its financial interest in such an affiliate in an amount in excess of the following "exempt amounts", which vary depending on the utility's pre-existing utility assets in all jurisdictions including Arizona:

<u>TOTAL UTILITY ASSETS</u>	<u>EXEMPT AMOUNT</u>
A. \$0 - \$1 Billion	\$5 Million
B. Over \$1 Billion to \$3 Billion	\$25 Million
C. Over \$3 Billion to \$6 Billion	\$50 Million
D. Over \$6 Billion to \$10 Billion	\$100 Million
E. Over \$10 Billion	\$150 Million

The "exempt amounts" are to be measured on a cumulative basis over the calendar year in which the transactions will be made.

b. for those transactions which require prior approval by the Commission pursuant to A.A.C. R14-2-804.B.2., the stay shall be lifted only for transactions between a utility and any affiliate not regulated by the Commission for which any bonds, notes or other evidences of indebtedness are issued by the affiliate to the utility.

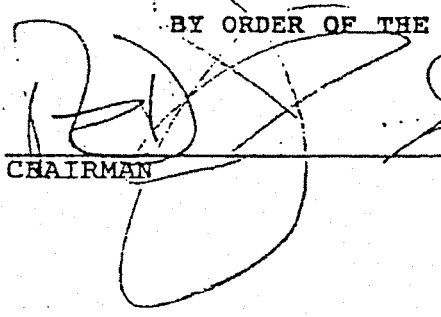
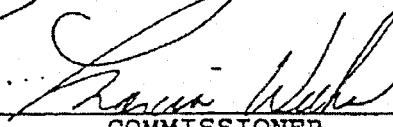

IT IS FURTHER ORDERED that except as provided herein the stay issued in Decision No. 56890 shall be and is hereby lifted, and the rules adopted in Decision No. 56844 shall become effective, in the following sequence:

21 . . .
 22 . . .
 23 . . .
 24 . . .
 25 . . .
 26 . . .
 27 . . .
 28 . . .

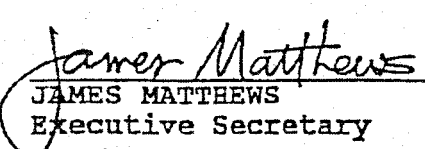
	<u>Public Service Corporation</u>	<u>Effective Date</u>
1		
2	Arizona Public Service Company	December 1, 1992
3	Southwest Gas Corporation	December 1, 1992
4	Tucson Electric Power Company	December 1, 1992
5	U S WEST Communications, Inc.	December 1, 1992
6	Arizona Water Company	January 15, 1993
7	Citizens Utilities Company	January 15, 1993
8	Citizens Utilities Rural Company, Inc.	January 15, 1993
9	Sun City Water Company	January 15, 1993
10	All other Class A public service	
11	corporations as defined in A.A.C.	
	R14-2-103	March 1, 1993

12 IT IS FURTHER ORDERED that this decision shall become
 13 effective immediately.

14 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

15   
 16 CHAIRMAN COMMISSIONER COMMISSIONER

17
 18 IN WITNESS THEREOF, I JAMES MATTHEWS,
 19 Executive Secretary of the Arizona
 20 Corporation Commission, have hereunto
 21 set my hand and caused the official
 22 seal of this Commission to be affixed
 23 at the Capitol, in the City of
 24 Phoenix, this 3 day of November,
 25 1992.

26 
 27 JAMES MATTHEWS
 28 Executive Secretary

29 DISSENT _____

ATTACHMENT A

CHAPTER 2

CORPORATION COMMISSION

ARTICLE 8	PUBLIC UTILITY HOLDING COMPANIES AND AFFILIATED INTERESTS
R14-2-801	Definitions
R14-2-802	Applicability
R14-2-803	Organization of Public Utility Holding Companies
R14-2-804	Commission Review of Transactions Between Public Utilities and Affiliates
R14-2-805	Annual Filing Requirements of Diversification Activities and Plans
R14-2-806	Waiver from the Provisions of this Article

1 R14-2-801. Definitions

2 In this article, unless the context otherwise requires:

- 3 1. "Affiliate", with respect to the public utility, shall mean
4 any other entity directly or indirectly controlling or
5 controlled by, or under direct or indirect common control with,
6 the public utility. For purposes of this definition, the term
7 "control" (including the correlative meanings of the terms
8 "controlled by" and "under common control with"), as used with
9 respect to any entity, shall mean the power to direct the
10 management policies of such entity, whether through the
11 ownership of voting securities, or by contract, or otherwise.
- 12 2. "Commission." The Arizona Corporation Commission.
- 13 3. "Entity." A corporation, partnership, limited partnership,
14 joint venture, trust, estate, or natural person.
- 15 4. "Holding Company" or "Public Utility Holding Company." Any
16 affiliate that controls a public utility.
- 17 5. "Reorganize" or "Reorganization." The acquisition or
18 divestiture of a financial interest in an affiliate or a
19 utility, or reconfiguration of an existing affiliate or
20 utility's position in the corporate structure or the merger or
21 consolidation of an affiliate or a utility.
- 22 6. "Subsidiary." Any affiliate controlled by a utility.
- 23 7. "System of Accounts." The accounting system or systems
24 prescribed for utilities by the Commission.
- 25 8. "Utility" or "Public Utility." Any Class A investor-owned
26 public service corporation subject to the jurisdiction of the
27 Arizona Corporation Commission.

1 R14-2-802. Applicability

2 A. These rules are applicable to all Class A investor-owned
3 utilities under the jurisdiction of the Commission and are
4 applicable to all transactions entered into after the effective
5 date of these rules.

6 B. Information furnished to the Commission in compliance with
7 these rules will not be open to public inspection, or made
8 public, except on order of the Commission, or by the
9 Commission, or a Commissioner in the course of a hearing or
10 proceeding.

11
12 R14-2-803. Organization of Public Utility Holding Companies

13 A. Any utility or affiliate intending to organize a public utility
14 holding company or reorganize an existing public utility
15 holding company will notify the Commission's Utilities Division
16 in writing at least one hundred and twenty (120) days prior
17 thereto. The notice of intent will include the following
18 information:

- 19 1. The names and business addresses of the proposed officers
20 and directors of the holding company;
 - 21 2. The business purposes for establishing or reorganizing
22 the holding company;
 - 23 3. The proposed method of financing the holding company and
24 the resultant capital structure;
 - 25 4. The resultant effect on the capital structure of the
26 public utility;
- 27
28

- 1 5. An organization chart of the holding company that
2 identifies all affiliates and their relationships within
3 the holding company;
- 4 6. The proposed method for allocating federal and state
5 income taxes to the subsidiaries of the holding company;
- 6 7. The anticipated changes in the utility's cost of service
7 and the cost of capital attributable to the
8 reorganization;
- 9 8. A description of diversification plans of affiliates of
10 the holding company; and
- 11 9. Copies of all relevant documents and filings with the
12 United States Securities and Exchange Commission and other
13 federal or state agencies.
- 14 10. The contemplated annual and cumulative investment in each
15 affiliate for the next five years, in dollars and as a
16 percentage of projected net utility plant, and an
17 explanation of the reasons supporting the level of
18 investment and the reasons this level will not increase
19 the risks of investment in the public utility.
- 20 11. An explanation of the manner in which the utility can
21 assure that adequate capital will be available for the
22 construction of necessary new utility plant and for
23 improvements in existing utility plant at no greater cost
24 than if the utility or its affiliate did not organize or
25 reorganize a public utility holding company.
- 26 B. The Commission Staff will, within thirty (30) days after
27 receipt of the notice of intent, notify the Applicant of any
28 questions which it has concerning the notice or supporting

1 information. The Commission will, within sixty (60) days from
2 the receipt of the notice of intent, determine whether to hold
3 a hearing on the matter or approve the organization or
4 reorganization without a hearing.

- 5 C. At the conclusion of any hearing on the organization or
6 reorganization of a utility holding company, the Commission
7 may reject the proposal if it determines that it would impair
8 the financial status of the public utility, otherwise prevent
9 it from attracting capital at fair and reasonable terms, or
10 impair the ability of the public utility to provide safe,
11 reasonable and adequate service.

12
13 R14-2-304. Commission Review of Transactions Between Public
14 Utilities and Affiliates

- 15 A. A utility will not transact business with an affiliate unless
16 the affiliate agrees to provide the Commission access to the
17 books and records of the affiliate to the degree required to
18 fully audit, examine or otherwise investigate transactions
19 between the public utility and the affiliate. In connection
20 therewith, the Commission may require production of books,
21 records, accounts, memoranda and other documents related to
22 these transactions.

- 23 B. A utility will not consummate the following transactions
24 without prior approval by the Commission:

- 25 1. Obtain a financial interest in any affiliate not regulated
26 by the Commission, or guarantee, or assume the liabilities
27 of such affiliate;
28

1 2. Lend to any affiliate not regulated by the Commission,
2 with the exception of short-term loans for a period less
3 than 12 (twelve) months in an amount less than \$100,000;
4 or

5 3. Use utility funds to form a subsidiary or divest itself
6 of any established subsidiary.

7 C. The Commission will review the transactions set forth in
8 subsection B above to determine if the transactions would
9 impair the financial status of the public utility, otherwise
10 prevent it from attracting capital at fair and reasonable
11 terms, or impair the ability of the public utility to provide
12 safe, reasonable and adequate service.

13 D. Every transaction in violation of subsection A or B above is
14 void, and the transaction shall not be made on the books of any
15 public service corporation.

16 E. The system of accounts used by the public utility will include
17 the necessary accounting records needed to record and compile
18 transactions with each affiliate.
19

20 R14-2-805. Annual Filing Requirements of Diversification Activities
21 and Plans

22 A. On or before April 15th of each calendar year, all public
23 utilities meeting the requirements of R14-2-802 and public
24 utility holding companies will provide the Commission with a
25 description of diversification plans for the current calendar
26 year that have been approved by the Boards of Directors. As
27 part of these filings, each public utility meeting the
28

1 requirements of R14-2-802 will provide the Commission the
2 following information:

- 3 1. The name, home office location and description of the
4 public utility's affiliates with whom transactions occur,
5 their relationship to each other and the public utility,
6 and the general nature of their business;
- 7 2. A brief description of the business activities conducted
8 by the utility's affiliates with whom transactions
9 occurred during the prior year, including any new
10 activities not previously reported;
- 11 3. A description of plans for the utility's subsidiaries to
12 modify or change business activities, enter into new
13 business ventures or to acquire, merge or otherwise
14 establish a new business entity;
- 15 4. Copies of the most recent financial statements for each
16 of the utility's subsidiaries;
- 17 5. An assessment of the effect of current and planned
18 affiliated activities on the public utility's capital
19 structure and the public utility's ability to attract
20 capital at fair and reasonable rates;
- 21 6. The bases upon which the public utility holding company
22 allocates plant, revenue and expenses to affiliates and
23 the amounts involved; an explanation of the derivation of
24 the factors; the reasons supporting that methodology and
25 the reasons supporting the allocation;
- 26 7. An explanation of the manner in which the utility's
27 capital structure, cost of capital and ability to raise
28 capital at reasonable rates have been affected by the

organization or reorganization of the public utility holding company;

8. The dollar amount transferred between the utility and each affiliate during the annual period, and the purpose of each transfer;

9. Contracts or agreements to receive, or provide management, engineering, accounting, legal, financial or other similar services between a public utility and an affiliate;

10. Contracts or agreements to purchase, or sell, goods or real property between a public utility and an affiliate; and

11. Contracts or agreements to lease goods or real property between a public utility and an affiliate.

B. After reviewing the diversification plans, the Commission may, within ninety (90) days after plans have been provided, request additional information, or order a hearing, or both, should it conclude after its review that the business activities would impair the financial status of the public utility, otherwise prevent it from attracting capital at fair and reasonable terms, or impair the ability of the public utility to provide safe, reasonable and adequate service.

R14-2-806. Waiver from the Provisions of this Article

A. The Commission may waive compliance with any of the provisions of this Article upon a finding that such waiver is in the public interest.

1 B. Any affected entity may petition the Commission for a waiver
2 by filing a verified application for waiver setting forth with
3 specificity the circumstances whereby the public interest
4 justifies noncompliance with all or part of the provisions of
5 this Article.

6 C. If the Commission fails to approve, disapprove, or suspend for
7 further consideration an application for waiver within thirty
8 (30) days following filing of a verified application for
9 waiver, the waiver shall become effective on the thirty-first
10 (31st) day following filing of the application.

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EXHIBIT D
Affiliate Rules Waivers

R14-2-801(5) and R14-2-803, such that the term "reorganization" does not include, and no Commission approval is required for, corporate restructuring that does not directly involve the utility distribution company ("UDC") in the holding company. For example, the holding company may reorganize, form, buy or sell non-UDC affiliates, acquire or divest interests in non-UDC affiliates, etc., without Commission approval.

R14-2-804(A)

R14-2-805(A) shall apply only to the UDC

R14-2-805(A)(2)

R14-2-805(A)(6)

R14-2-805(A)(9), (10), and (11)

Rescission of Prior Commission Orders

Section X.C of the "Cogeneration and Small Power Production Policy" attached to Decision No. 52345 (July 27, 1981) regarding reporting requirements for cogeneration information.

Decision No. 55118 (July 24, 1986) - Page 15, Lines 5-1/2 through 15-1/2; Finding of Fact No. 24 relating to reporting requirements under the abolished PPFAC.

Decision No. 55818 (December 14, 1987) in its entirety. This decision related to APS Schedule 9 (Industrial Development Rate) which was terminated by the Commission in Decision No. 59329 (October 11, 1995).

9th and 10th Ordering Paragraphs of Decision No. 56450 (April 13, 1989) regarding reporting requirements under the abolished PPFAC.

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DECISION NO. 61973

Arizona Public Service Company's Response to
Arizona Corporation Commission Administrative Law Judge
Request for Information Dated 11/09/05
Docket Nos. E-00000A-02-0051 & E-00000A-01-0630

7. List those transactions for which APS must file notice with the Commission

APS Response:

APS is not required to file "notice" with the Commission regarding affiliate transactions. Pursuant to Commission Rule 804 (Commission Review of Transactions Between Public Utilities and Affiliates), however, APS must seek prior Commission approval before it may obtain a financial interest in an unregulated affiliate or guarantee or assume its liabilities, loan money to an unregulated affiliate, or use utility funds to form a subsidiary or divest itself of an established subsidiary. For example, APS sought prior Commission approval to loan \$500,000,000 to Pinnacle West Energy Corporation, as authorized by the Commission in Decision No. 65796. Pinnacle West must file a notice with the ACC under Rule 803 for any "reorganization" as that term is defined in Rule 801 as modified by Decision No. 58063 and subject to waivers granted Pinnacle West in Decision No. 61973.

Arizona Public Service Company's Response to
Arizona Corporation Commission Administrative Law Judge
Request for Information Dated 11/09/05
Docket Nos. E-00000A-02-0051 & E-00000A-01-0630

- 8. List any changes in function for which APS or an affiliate would be required to file notice with the Commission.**

APS Response:

Commission rules do not require APS or its affiliates to provide notice to the Commission for any change in "function" of that affiliate. Pursuant to Commission Rule 803 (Organization of Public Utility Holding Companies), however, APS and its affiliates must notify the Commission at least 120 days in advance of a reorganization. Under Rule 801(5) (Definitions), "reorganization" includes the acquisition or divestiture of a financial interest in an affiliate or subsidiary, or the reconfiguration of an existing affiliate or utility's position in the corporate structure or merger or consolidation of an affiliate or a utility. The term "reorganization" does not include an affiliate's change in function.

Under this Rule, Pinnacle West would be required to notify the Commission were it planning to reorganize any of its subsidiaries (including APS subsidiaries), which would include formation, divestiture, merger, consolidation or other change in legal corporate structure.

APS's direct subsidiaries include Bixco, Inc., Axiom Power Solutions, Inc., and PWENewCo, Inc. APS also controls the APS Foundation, Inc., a non-profit IRC §501(c)(3) entity. Bixco, Axiom and PWENewCo are all dormant. There has been no change in structure involving them. APS Foundation continues to pursue the charitable purpose for which it was formed.